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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]45

DUPLEX PRINTING PRESS COMPANY, APPELLANT,

vs.

EMIL J. DEERING AND WILLIAM BRAMLEY, INDIVIDUALLY AND AS BUSINESS AGENTS OF DISTRICT No. 15 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED JULY 11, 1918.

(26,642)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 556.

DUPLEX PRINTING PRESS COMPANY, APPELLANT,

vs.

EMIL J. DEERING AND WILLIAM BRAMLEY, INDIVIDUALLY AND AS BUSINESS AGENTS OF DISTRICT NO. 15 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.

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United States Circuit Court of Appeals for the Second Circuit.

DUPLEX PRINTING PRESS COMPANY, Complainant-Appellant,

against

EMIL J. DEERING et als., Defendants-Appellees.

TRANSCRIPT OF RECORD.

Appeal from the District Court of the United States for the Southern District of New York.

Walter Gordon Merritt, Solicitor for Complainant-Appellant, No. 135 Broadway, Borough of Manhattan, New York City.
Frank X. Sullivan, Solicitor for Defendants-Appellees, No. 46 Cedar Street, Borough of Manhattan, New York City.

United States Circuit Court of Appeals, Second Circuit. Filed Sep. 10, 1917. William Parkin, Clerk.

1

Subpoena.

The President of the United States of America to Emil J. Deering and William Bramley, individually and as Business Agents of District No. 15 of the International Association of Machinists; Michael T. Neyland, individually and as Business Agent of Local Lodge No. 328 of the International Association of Machinists, and Edward F. Nielsen, individually and as Business Agent of Riggers' Protective Union; Jacob J. Keppler, individually and as Vice-President of the International Association of Machinists, GREETING:

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YOU ARE HEREBY COMMANDED to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity by the Duplex Printing Press Company, and to further do and receive what the said Court shall have considered in this behalf; and this you are not to omit under the penalty of Two hundred and fifty dollars ($250).

WITNESS, Honorable Charles M. Hough, Judge of the District Court of the United States for the Southern District of New York, at the City of New 3
(Seal) York, on the 13th day of April, in the year one thousand nine hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-eighth.

ALEX. GILCHRIST, JR.,
Clerk.

WALTER GORDON MERRITT,
Complainant's Solicitor.

4 *Subpœna.*

The defendants are required to file their answer or other defense in the above cause in the Clerk's office of this Court on or before the twentieth day after service hereof, excluding the day of said service; otherwise the bill aforesaid may be taken *pro confesso.*

ALEX. GILCHRIST, Jr.,
Clerk.

(Endorsed: Filed U. S. District Court, S. D. of N. Y., Apr. 14, 1914.)

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Amended Bill of Complaint.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

DUPLEX PRINTING PRESS COMPANY,
Complainant,

against

EMIL J. DEERING and WILLIAM BRAMLEY, individually and as Business Agents of District No. 15 of the International Association of Machinists; MICHAEL T. NEYLAND, individually and as Business Agent of Local Lodge No. 328 of the International Association of Machinists, and EDWARD F. NIELSEN, individually and as Business Agent of Riggers' Protective Union; JACOB J. KEPPLER, individually and as Vice-President of the International Association of Machinists,
Defendants.

The Duplex Printing Press Company, a corporation duly organized and existing under the Laws of the State of Michigan, and a citizen of Michigan, files this, its amended Bill of Complaint, against Emil J. Deering and William Bramley, individually and as Business Agents of District No. 15 of the International Association of Machinists; Michael T. Neyland, individually and as Business Agent of Local Lodge No. 328 of the International Association of Machinists, and Edward F. Nielsen,

individually and as Business Agent of Riggers' Protective Union; Jacob J. Kepplet, individually and as Vice-President of the International Association of Machinists, all residents, citizens and inhabitants of the State of New York and of the Southern District of New York, and thereupon your orator complains and shows:

1. That your orator, the Duplex Printing Press Company, is, and at all times mentioned in this amended bill of complaint was, a corporation duly organized and existing under and pursuant to the Laws of the State of Michigan and a citizen and
11 resident of the State of Michigan, and that your orator is informed and believes that the defendants and each of them are citizens, residents and inhabitants of the State of New York, and that all of the defendants are residents, citizens and inhabitants of different states from the state of citizenship and residence of your orator. That the amount in controversy in this action exceeds Five Thousand ($5,000) Dollars, exclusive of interest and costs.

2. That your orator is engaged in the business of manufacturing, producing, selling and installing printing presses and owns and operates factories in the city of Battle Creek, in the State of Michigan, where all of its presses are produced and man
12 ufactured.

3. That your orator employs about two hundred and fifty machinists in its said factories in the State of Michigan in connection with its said work of manufacturing printing presses and about fifty additional employes, part of whom are employed in its office as travelling salesmen securing orders for its said presses, and part as expert machinists to supervise the work of installing said printing presses in the places of business of the various pur

chasers, and that in the course of your orator's business it has always operated an open shop without discrimination against any person employed in its said factories on the ground that he was or was not a member of any labor union, and that your orator has never discriminated against the employment of any skilled mechanics to supervise and take part in the work of hauling or installing its said printing presses to or at the places of business of its said customers on the ground that they were members of any labor union, but that your orator has at all times endeavored to pursue the policy of only employing union men and observing union conditions in connection with the hauling, erection and installation work in localities where such trades are highly organized and the employment of non-union men might cause the customer labor difficulties. 13 14

4. That over eighty (80%) per cent. of your orator's sales are made to customers outside of the State of Michigan, through the channels of interstate commerce by shipping said presses to the said customers through common carriers, and that said presses are manufactured, sold and delivered as a completed product like any other commodity to said customers, except that your orator, in the ordinary conduct of its business, usually contracts to have one or more expert machinists in its regular employ, thoroughly conversant with the erection and operation of said presses, supervise and take part in the assembling and erection of said presses and to instruct the men employed in the plants of its said customers in the operation of said presses, but that in most cases your orator does not send more than one man to act for it in connection with said work of installation and instruction. That most of your orator's product is sold through sales- 15

men in different states of the Union, who solicit and secure orders and contracts from customers and forward them to the head office of your orator at Battle Creek, subject to acceptance at said offices, and all orders taken by said salesmen are subject to acceptance and approval by your orator at its offices in Battle Creek, Michigan.

5. On information and belief, that the International Association of Machinists is an unincorporated association of journeymen machinists, with a membership of over 60,000, and has affiliated therewith local unions and lodges in different
17 states and territories of the United States, which are also unincorporated associations, and that each member of any one of said affiliated local lodges is, by virtue thereof, a member of said International Association, and that no person can become a member of any of said lodges or said International Association without receiving the necessary consent and vote from said Association, and said association and local lodges control the selection of their members like any other private society. That District No. 15 of said International Association of Machinists is one of the subdivisions of said International Association and a voluntary association, and Local Lodges Nos. 328, 402, 406, 429, 431 and
18 721 are each subdivisions thereof and voluntary associations, and have their principal offices in the City of New York, each having jurisdiction over a certain group of the members of said International Association of Machinists in said City of New York. That the Riggers' Protective Union is an unincorporated association of workingmen engaged in handling, hauling and erecting machinery, etc., and has jurisdiction over all union men in New York City engaged in said business, and your orator is informed and believes that William H. Johnston

is president of the International Association of Machinists and that defendant Jacob J. Keppler is Vice-President thereof, and that defendants Emil J. Deering and William Bramley are business agents of District No. 15 of said International Association of Machinists, and that defendant Michael T. Neyland is business agent of Local Lodge No. 328 of said International Association of Machinists, and that defendant Edward F. Nielsen is business agent of said Riggers' Protective Union, and that each of said officers have respectively held the aforesaid offices continuously for many months past. That nearly all of the skilled machinists in 20
New York City are members of said International Association of Machinists, and that nearly all of the riggers in New York City are members of the Riggers' Protective Union, and the said union machinists and riggers are affiliated with another unincorporated association known as the Building Trades Council of New York City, and that said Building Trades Council is composed of the various unions in New York City whose members are engaged in the building business, and includes in its membership the unions of some thirty different trades, with an aggregate membership of from 75,000 to 100,000 members, and that by virtue of the agreements and understanding existing between each of said unions no member thereof is allowed 21
to work on or in connection with any building where any non-union man is employed, and said Building Trades Council is authorized to call strikes of all trades employed on or in connection with any building in the event that any non-union man is employed in any of said trades, and that by reason of said rules and regulations and the affiliation of said thirty unions through the Building Trades Council it is practically impossible to

erect any building in the Borough of Manhattan where any non-union man is employed in any of said trades, and your orator is informed and believes that the entire machinery of said Building Trades Council will be put into operation and effect against it in order to prevent your orator from exhibiting or displaying its presses at the exposition conducted by the National Exposition Company, Inc., as hereinafter set forth, unless a restraining order be issued out of this court.

6. On information and belief, that for many years past the International Association of Machin-
23 ists and the local branches thereof and the members and officers of said Association and its branches, and others to your orator unknown, have been engaged in a combination and conspiracy to monopolize the machinists' trade throughout the United States and prevent the employment of any machinist who is not a member of said International Association, and have adopted various means and devices to prevent any employer procuring or retaining the necessary skilled organization for the production or installation of printing presses or the necessary customers for the sale thereof unless said employers operate a closed or union shop and refuse employment to any machinist who is not a member of said International Association of Ma-
24 chinists, and that said conspirators have been so far successful in carrying out their said combination; that practically all manufacturers of printing presses of the kind and character manufactured by your orator, except your orator, have been compelled to comply with the demands of said conspirators and to refuse employment to any person who is not a member of said International Association, and that for a number of years past the said conspirators have further combined and conspired

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together to attain their said monopolistic and unlawful ends by restraining, injuring and destroying your orator's interstate trade, business and good will, and interfering with the sale, carting and installation of your orator's printing presses in New York State and the different states of the United States, for the purpose of destroying its interstate trade, contrary to the statutes of the United States and the State of New York in such cases made and provided and contrary to the common law, because your orator operates an open shop, and that all of the acts and doings of the said conspirators hereinafter described were done in furtherance of said conspiracy, and that if said conspirators are successful in destroying your orator's business because it is unwilling to become a member of said combination such monopoly will have become complete and no person will be able to secure employment in connection with the manufacture of printing presses of the kind manufactured by your orator, except with the consent of the said International Association of Machinists.

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7. That in the early part of the year 1909 your orator entered into a contract in writing to supply a printing press to the *New York World*, a daily newspaper in the City of New York, and in February, 1910, two men who represented themselves to be officers of the International Association of Machinists called at the office of your orator in Battle Creek and, acting in furtherance of said conspiracy, demanded of the president of your orator that its factories be unionized, and stated that they noticed that your orator was ready to ship a press to the *New York World*, and that unless your orator unionized its said factory at Battle Creek that they would see that the said press never turned a wheel in New York City, and that no teamster in New

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York City would be allowed to handle or haul such press. That when said press was delivered to the office of the *New York World*, after dark, in order to avoid trouble, defendant Keppler, acting in furtherance of said conspiracy, stated to the president of your orator in New York City that the International Association of Machinists had just learned at their headquarters in Washington, D. C., that a press, manufactured by your orator, was being installed for the *New York World*, and that said Keppler gave notice that all men employed in connection with said work would be called off on strike that night and would not return to work the following morning. That as a result of further argument between the president of your orator and the defendant Keppler said threat was withdrawn and said press was erected without further difficulty.

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8. That subsequently thereto defendant Keppler, speaking for said International Association of Machinists, has made repeated demands upon the president of your orator that its said factory at Battle Creek, Michigan, be unionized.

9. That in the month of August, 1913, a strike was called in your orator's factory by the defendants, or those acting in conjunction with them, in furtherance of said conspiracy, and twelve or fourteen men quit work under orders of the union without presenting any grievances or demands or giving any notice, and that all of said men who quit work were members of said International Association of Machinists, and that immediately after said strike took place, and with like purpose and intent, said confederates placed pickets around said factory, to prevent your orator from securing skilled machinists to take the place of those who had gone out on strike, and your orator is informed and believes

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that they have ever since persistently endeavored to induce other skilled machinists working for your orator at Battle Creek or in connection with the installation of your orator's presses in different parts of the country to quit work, and have employed fals hoods, misrepresentations, threats, intimidation and personal violence to induce said employers of your orator to quit work and to prevent other mechanics entering the employment of your orator, and your orator has thereby been caused great and irreparable injury.

10. On information and belief, that the said conspirators have published and widely distributed letters and circulars among, and have made oral communications to, unions of teamsters, machinists and pressmen and their officers and members, and also to other kinds of mechanics or journeymen who do, or might have occasion to do, the work of hauling, handling, erecting or operating printing presses, to the effect that your orator was unfair, and that no mechanics or craftsmen of any class could or should haul, handle, install or operate printing presses produced by your orator, and that all machinists were forbidden to handle, erect or operate such presses, and that the object and effect of said circulars has been to incite union officers in all parts of the United States to induce, prevent and forbid all members not to haul, handle, erect or operate such presses and to thereby cause loss and damage to any person or corporation purchasing your orator's presses, and to deter said persons and corporations from doing business with your orator for fear of labor difficulties, and your orator has been thereby caused irreparable loss and damage. 32 33

11. On information and belief, that said conspirators have endeavored to prevent customers and those who might become customers of your orator

from placing contracts with or purchasing printing presses from your orator, and they have threatened said customers with labor difficulties in the nature of strikes and boycotts which would injure their said business if they patronized your orator, and they have made misrepresentations to your orator's customers and those who might become customers of your orator as to the labor conditions prevailing in your orator's factory, and have made statements to the effect that organized labor would prevent your orator from installing said presses, and all of said statements have been made for the
35 purpose of interfering with your orator's interstate trade and good will and preventing your orator from securing orders and contracts in states outside of the State of Michigan, in order thereby to carry out the purposes of said conspiracy, and they have repeatedly ordered and caused strikes of mechanics and laborers employed by your orator and your orator's customers in different states of the United States in connection with the hauling, erection and installation of presses manufactured by your orator, and they have thereby harassed, delayed and damaged your orator and its customers for the sole purpose of destroying your orator's interstate trade and business and compelling it to operate a union shop at Battle Creek, and your
36 orator has been thereby irreparably injured.

12. That the National Exposition Company, Inc., is a New York corporation engaged in organizing and managing exhibitions of various kinds in New York City, including exhibitions of printing press machinery, and that said exhibitions are well and favorably known throughout the country, and the right and privilege to exhibit there is a valuable right, carrying with it much advertisement and prestige. That in the spring of 1913 your orator

entered into an agreement in writing with the said Exposition Company, in which said Exposition Company leased to your orator certain space in the Grand Central Palace where your orator could exhibit its printing press machinery in connection with an exhibition which was to take place in the Grand Central Palace in the City of New York, on the 19th day of April, 1913, and at which exhibition your orator's competitors and many other persons and corporations engaged in the manufacture of machinery were to have exhibits.

13. On information and belief, that on the 10th day of April, 1913, and after your orator had made 38
said contract with said National Exposition Company, the defendant Deering, at all times acting in furtherance of said conspiracy, called on the president of said exposition company and notified him that if any non-union men were employed by said exposition company in connection with said exhibition, or by any of the exhibitors who took part in connection therewith, a strike would take place which would prevent said exhibition being carried out, and that subsequently, after said exposition company had put said order into effect requiring the employment of only union men in connection with said exhibition by either said exposition company or by any of its said exhibitors, the defendants 39
Deering and Neyland, acting in furtherance of said conspiracy, informed the president of the said exposition company that your orator would not be allowed to exhibit at said public exhibition because it operated an open shop in Battle Creek, Michigan, and a general strike of all men employed in connection with said exhibition would take place if your orator was allowed to exhibit, and that as a result of said threats and the partial carrying out thereof your orator was prevented from securing

the necessary skilled help to deliver and install its said machinery in the said building in time for the opening of said exhibition on the evening of Saturday, April 19th, 1913, and it was only possible to install said machinery after all of the other exhibitors and the exposition company had completed all of their work and no longer required the service of skilled craftsmen in connection with said exhibition, and by secretly taking said machinery in on the evening of Saturday, April 19th, and erecting it on the following Sunday.

14. That in the early part of 1914 your orator
41 entered into a contract in writing leasing a certain space from said exposition company for the sum of $675.00, for the purpose of exhibiting its said machinery at an exhibition of printing presses to take place in connection with an annual meeting of the American Newspaper Association in the Grand Central Palace in New York City, and that said exhibition is to commence on the 18th day of April, 1914, and continue until the 25th day of April, 1914. That the competitors of your orator are to exhibit at said exhibition, and many other manufacturers of machinery, and that said exhibits are called to the attention of the representatives of hundreds of leading newspapers convened in New York City during the time of said exhibition, and
42 that said exhibition is held for the purpose of giving the representatives of said newspapers so convened a chance to examine, and the various manufacturers of printing presses a chance to exhibit, said printing machinery, with a view to establishing trade relations between said newspapers and the producers of said printing machinery, and that the privilege of displaying at said exhibition is of great value to your orator, and your orator has spent thousands of dollars in advertising said exhibition

of its machinery, and in connection with the manufacture of said presses for exhibition.

15. On information and belief, that the defendants Deering, Bramley, Neyland and others acting in conjunction with them in furtherance of the aforesaid conspiracy are threatening the president of said exposition company that unless said contract with your orator is repudiated by said exposition company and your orator is prevented from exhibiting at said annual exposition that they will cause a strike of all men employed by the exposition company or any of its exhibitors in connection with any of the preparations for said ex- 44
hibition or exhibits, and will ruin and destroy the good will, prestige and reputation of said exposition company and its said exhibitions by calling said strikes, and will cause the said exposition company loss of patronage by inducing and preventing manufacturers from exhibiting at said exhibition, and that your orator is advised by the said exposition company that unless it can be protected from all of said threatened damage it will be compelled and coerced to cancel and refuse to carry out its said lawful contract with your orator, and if said exposition company does refuse to carry out said contract and your orator is refused the privilege of exhibiting at said exhibition it will be a source of great loss and irreparable injury to your orator's 45
reputation, trade and business, and that by reason of the prestige of said exhibition and the prominence of your orator's name in the trade said disturbance will become widely known among all persons or corporations who might be purchasers of your orator's presses, and the impression will become widespread that anyone who purchases your orator's presses or attempts to do business with your orator will have labor difficulties, and your

46 *Amended Bill of Complaint.*

orator's trade and good will would be thereby irreparably damaged.

16. That your orator has a property interest in the freedom of all persons or corporations who are or might become customers of your orator, to purchase their printing presses from such manufacturers as they see fit, without constraint, duress, coercion or any other influence incompatible with free competition, and that by reason of the aforesaid conspiracy and the acts in furtherance thereof to cause costly labor troubles to your orator's customers and to interfere with the carting, instal-
47 lation and use of your orator's presses it is inevitable that nearly all of your orator's customers should eventually transfer their patronage to competitors of your orator rather than undergo said labor troubles so inflicted upon said customers for the purpose of injuring your orator's business, unless your orator can obtain relief from this honorable court.

17. That on account of the aforesaid combination and conspiracy and the acts performed in furtherance thereof your orator has already suffered great loss and damage in its good will, trade and business, and is suffering a continuing injury and has no adequate remedy at law, because much of its
48 said damage is incapable of definite proof for recovery in law and because it would be necessary for your orator to bring a multiplicity of suits against the great number of persons engaged in said conspiracy, and because many of said defendants are insolvent and would be unable to respond in damages, and because it is impossible for your orator to ascertain the full extent to which its good will, trade and business has been injured and the name of each newspaper which has been deterred from placing contracts and orders with your orator

by reason of the general rumors inspired by the defendants for the purpose of frightening away any newspaper which might patronize your orator's presses.

18. Your orator has already lost many customers on account of the aforesaid conspiracy, and its trade is being injured and jeopardized each day that the said conspiracy continues, and it is necessary that your orator have immediate relief in the form of a preliminary injunction, and that also a restraining order should issue out of this honorable Court until such time as the defendants are ready for a hearing on a preliminary injunction. 50
That if said restraining order is not issued the defendants and those acting in conjunction with them will carry out their said threats against the said National Exposition Company unless and until said National Exposition Company shall unlawfully repudiate its said contract permitting your orator to exhibit its said machinery at said exhibition in said Grand Central Palace in the week commencing April 18th, 1914, before the large number of newspaper representatives and possible customers who will visit said exposition. That if said exposition company refuses to cancel its said contract with your orator, then its said exhibition of printing presses will be hindered and prevented in such a way as to irreparably injure the prestige and business of said exposition company, and your orator will lose the money which it has already spent for said exposition and the opportunity of advertising its said machines before the newspapers of the country, and the great notoriety attached to said disturbance will reflect upon your orator and its ability to carry out contracts without disturbances, and be a lasting injury to its trade and good will. That if the said exposition company does 51

cancel its said contract with your orator, then your orator will be irreparably injured by being deprived of its widely advertised opportunity to exhibit at said annual exposition before the newspapers of the country and to secure contracts or orders in that way, and will lose the amount of money it has already spent for said purpose, and will find its trade and good will irreparably injured by reason of the notoriety and prominence which will be given to said disturbance both by the defendants and members of the trade generally, including your orator's competitors; that it is, therefore, necessary for your orator to have an *ex*
33 *parte* restraining order without delay, to prevent the carrying out of said conspiracy to injure and destroy the said exposition company unless it will repudiate its lawful contract with your orator.

19. That your orator is unable to ascertain the names of all of the members of the said International Association of Machinists and of the officers of its local unions, and even if your orator could obtain the names of all of the said members and all of the officers of said local unions that said members would be so numerous as to make it impracticable for your orator to name them all as defendants herein, and that a trial of the issues in this case between your orator and the above-named
34 defendants would insure a fair trial of the issues in behalf of all, and that the defendant officers are employed by the members of said union to do the various acts of which your orator complains and are duly authorized to and do represent and act for the members of said unions in performing said acts, and that, therefore, your orator has sued the above-named representatives of such voluntary associations as representing the members thereof, and your orator prays that whatever relief may be

granted herein may be had against the other members of said conspiracy and the members of said associations and the funds of said associations, as though the members thereof and the associations were parties to this suit and present and defending this, your orator's, amended bill of complaint.

39. That all of the aforesaid acts, doings and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest injury and oppression of your orator in the premises.

In consideration whereof and for as much as your orator is remediless in the premises by the strict rules of common law, and only relievable in a court of equity where matters of this nature are cognizable and relievable, your orator prays the relief of this honorable Court as follows: 56

1. That the defendants Emil J. Deering and William Bramley, individually and as business agents of District No. 15 of the International Association of Machinists; Michael T. Neylaud, individually and as business agent of Local Lodge No. 328 of the International Association of Machinists, and Edward F. Nielsen, individually and as business agent of Riggers' Protective Union; Jacob J. Keppler, individually and as vice-president of the International Association of Machinists, their and each of their agents, servants, attorneys, confederates and all persons acting in aid of or in conjunction with them or any of them, or under their authority, suggestion or direction, be restrained and enjoined from combining and conspiring together to monopolize the machinist trade, and from combining and conspiring together to prevent the employment of non-union machinists, and from combining and conspiring together to injure the 57

complainant's business, trade and good will, and to prevent the complainant from securing skilled mechanics to carry on its said work of producing, hauling and erecting printing presses for customers in New York State and other states outside of Michigan, and to prevent the complainant from securing orders and contracts for the sale and installation of printing presses, and from interfering with the sale, carting, installation, use or operation of printing presses made by the complainant, and from doing any and all acts whatsoever in furtherance of said combination and conspiracy to accomplish any of the aforesaid purposes, and more
59 particularly from doing any of the following acts in furtherance of said conspiracy:

From publishing, circulating or otherwise communicating, either directly or indirectly, in writing or orally, to any person or corporation, any statement or notice of any kind or character whatsoever calling attention to the fact that your complainant or its business or its products are or were or have been declared unfair or are on any unfair list, or that your complainant should not be patronized or dealt with or its printing presses purchased, used, handled, hauled, operated, worked upon or dealt in because made in an open or non-union shop, and from publishing, circulating or communicating,
60 either orally or in writing, any representation or statement of like effect or import, in any manner that will injure or interfere with the complainant's business or with the free and unrestricted right of the complainant to dispose of its printing presses and to obtain contracts and orders for printing presses to be manufactured and installed by the complainant.

From giving notice verbally or in writing to any person, firm or corporation to refrain from solicit

ing, making or carrying out contracts with complainant for the purchase, carting, installation, operation, exhibition, advertisement or display of printing presses made by the complainant, or to refrain from purchasing, hauling, installing, using, handling or operating printing presses of any kind made by complainant under threats that if such contracts or purchases are made or carried out, or such work is done, they will cause the person so notified loss, trouble or inconvenience, or that they will interfere with and prevent the complainant from carrying out said contracts, or that they will cause persons employed by others to do work in 62
connection with said presses or upon buildings or in connection with exhibitions where said presses are to be displayed, used or installed to withdraw from work upon said building or in connection with said exhibitions, or that they will cause persons not to exhibit at said exhibition.

And from attempting to prevent the sale, carting, installation, use, operation, exhibition or display of printing presses manufactured by complainant, or the performance of contracts made by the complainant, by inducing or attempting to induce any person or persons whomsoever to decline employment or cease employment or not to seek employment under any persons, firms or corporations or representatives of the complainant engaged in 63
the work of hauling, carting, installing, handling, using or operating said printing presses for customers because the complainant does not observe union regulations in Battle Creek, Michigan.

And from preventing or attempting to prevent the complainant from exhibiting its said presses at any exhibition or exposition, or advertising said presses, by threatening any persons or corporations having charge of such exposition or advertising, or

any person or corporation doing business with them, with labor difficulties or loss of patronage, if your orator is allowed to exhibit or advertise, and from inducing any person or persons employed by said exposition company or advertising agency, or any person or corporation doing business with them, to cease employment or to decline employment or to remain out of employment of said exhibitors or exposition company as long as your complainant is allowed to take part in said exhibition.

And from inducing any person or corporation not to do business with or work for any person or corporation because such person or corporation
65 may have or purposes to have, or formerly had, business relations with complainant.

And from inciting or intentionally causing strikes or labor troubles among men employed by customers, representatives or agents of your complainant outside of Battle Creek, Michigan, where no grievances exist against the complainant or its agents or customers other than the alleged grievance that the complainant does not operate its factory at Battle Creek, Michigan, in accordance with the rules and regulations prescribed by the International Association of Machinists or any of its officers or subdivisions.

And from threatening, intimidating or assault-
66 ing persons in the employ of your complainant, or those engaged in hauling, installing, using, handling or operating machinery manufactured by your complainant, and from making misrepresentations or false statements concerning the labor conditions existing in the complainant's factory for the purpose of interfering with the complainant in securing skilled mechanics to enter or remain in its employ or in securing orders and contracts from customers for the sale, installation and use of printing presses.

67

And from using any and all ways, means and methods of doing any of the aforesaid forbidden acts, and from doing any of the forbidden acts either directly or indirectly or through by-laws, orders, directions or suggestions to committees, associations, officers, agents or otherwise.

2. That the complainant recover of the defendants such damages as it may have suffered, and that such damages be assessed in such manner as hereinafter directed by order of this Court.

3. That until the further order of this Court a temporary injunction and decree of the character hereinabove prayed for be issued out of this Court, 68 to remain in full force and effect until the entry of a final decree upon final hearing herein.

4. That a restraining order be issued out of this Court without notice, to remain in full force and effect until the hearing by this Court of a motion for a preliminary injunction.

5. That your orator may have such other and further relief in the premises as the nature and circumstances of this case may require and as to this honorable Court may seem meet and proper.

6. And that it please this Court to grant unto your orator a writ of subpoena of the United States of America issued out of and under the seal of this 69 honorable Court and directed to the defendants Emil J. Deering and William Bramley, individually and as business agents of District No. 15 of the International Association of Machinists; Michael T. Neyland, individually and as business agent of Local Lodge No. 328 of the International Association of Machinists, and Edward F. Nielsen, individually and as business agent of Riggers' Protective Union; Jacob J. Keppler, individually and

as vice-president of the International Association of Machinists, and thereby commanding them and each of them on a day certain therein to be named and under a certain penalty to be and appear before this honorable Court, then and there to answer all and singular, but not under oath, which is hereby expressly waived, in regard to the premises and to respond to, perform and abide by such order, direction and decree as may be made against it or them, or any of them, in the premises, and as shall seem meet and agreeable to equity and good conscience.

71 And your orator, as in duty bound, will ever pray, &c.

WALTER GORDON MERRITT,
Solicitor for Complainant,
Office and Post Office Address,
No. 135 Broadway,
Borough of Manhattan,
New York City, N. Y.

72

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

IRVING L. STONE, being duly sworn, deposes and says: That he is the President of Duplex Printing Press Company, the complainant above named; that he has read the foregoing amended complaint and is familiar with the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

IRVING L. STONE.

74

Subscribed and sworn to before me
this 29th day of April, 1914.

EDWIN C. MULLIGAN,
Notary Public,
N. Y. Co.

(Endorsed: Filed U. S. District Court, S. D. of N. Y., Apr. 30, 1914.)

Marshal's Certificate.

I hereby certify that on the 14th day of April, 1914, at the City of New York, in my District, I personally served the within subpoena in equity upon the within named defendant Emil J. Deering, 75
individually and as Business Agent of District No. 15 of the International Association of Machinists, by exhibiting to him at 110 Nassau Street, New York City, the within original, at the same time leaving with him a copy thereof.

WILLIAM HENKEL,
United States Marshal,
Southern District of New York

Dated, April 14th, 1914.

76 *Marshal's Certificate.*

I hereby further certify that on the 14th day of April, 1914, at the City of New York, in my District, I personally served the within subpoena in equity upon the within named William Bramley, individually and as Business Agent of District No. 15 of the International Association of Machinists, by exhibiting to him at 110 Nassau Street, New York City, the within original, at the same time leaving with him a copy thereof.

WILLIAM HENKEL,
United States Marshal,
Southern District of New York.

77

Dated, April 14th, 1914.

78

Answer.

79

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

DUPLEX PRINTING PRESS COMPANY,

Complainant,

against

EMIL J. DEERING and WILLIAM BRAMLEY, individually and as Business Agents of District No. 15 of the International Association of Machinists; MICHAEL T. NEYLAND, individually and as Business Agent of Local Lodge No. 328 of the International Association of Machinists, and EDWARD F. NIELSEN, individually and as Business Agent of Riggers' Protective Union; JACOB J. KEPPLER, individually and as Vice-President of the International Association of Machinists,

Defendants.

80

The defendants Emil J. Deering, William Bramley and Michael T. Neyland, respectively, now and at all times hereafter saving to themselves all, and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in complainant's amended bill of complaint contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say:

81

82 *Answer.*

ONE: In answer to the first paragraph of complainant's amended bill of complaint, defendants having no personal knowledge of the incorporation of the complainant company, do neither deny or admit the allegation as to its incorporation or as to its citizenship and residence; but defendants admit that Emil J. Deering and Michael T. Neyland are each of them residents, citizens and inhabitants of the State of New York and defendant William Bramley a resident and inhabitant of the State of New Jersey. Defendants deny all the other allegations in the first paragraph of complainant's amended bill of complaint contained.

83

TWO: The defendants admit all the allegations set forth in the second paragraph of complainant's amended bill of complaint.

THREE: In answer to the third paragraph of complainant's amended bill of complaint, defendants admit that complainant employs about two hundred and fifty (250) machinists in its factories in the State of Michigan in connection with its work of manufacturing printing presses, and in addition about fifty (50) employees, part of whom are employed in its offices, as travelling salesmen securing orders for its presses, and part as expert machinists for the purpose of installing said printing presses in the places of business of the various purchasers; but defendants deny all the other allegations set forth in the third paragraph of said amended bill of complaint.

84

FOUR: The defendants admit the allegations set forth in the fourth paragraph of complainant's amended bill of complaint.

FIVE: Answering the allegations of the fifth par

agraph of complainant's amended bill of complaint, these defendants deny that nearly all of the skilled machinists of New York City are members of the International Association of Machinists, and that nearly all of the Riggers in New York City are members of the Riggers' Protective Union; deny that by virtue of any agreements and understanding existing between each or any of said unions no member thereof is allowed to work on or in connection with any building where any non-union man is employed; deny that said Building Trades Council is authorized to call strikes of all trades employed on or in connection with any building in the event that any non-union man is employed in any of said trades, and that by reason of said or any rules and regulations and the, or any affiliations of said thirty unions, through the Building Trades Council, it is practically impossible to erect any building in the Borough of Manhattan where any non-union man is employed in any of said trades; deny that the majority of said Building Trades Council will be put into operation and effect against complainant in order to prevent complainant from exhibiting or displaying its Press at the Exposition conducted by The National Exposition Company, unless a restraining order be issued out of this court. All the other allegations in the fifth paragraph of said complainant's amended bill of complaint are admitted.

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SIX: Defendants deny all of the allegations set forth in the sixth paragraph of complainant's amended bill of complaint.

SEVEN: Defendants deny all of the allegations set forth in the seventh paragraph of complainant's amended bill of complaint.

88 Answer.

EIGHT: Defendants deny all of the allegations set forth in the eighth paragraph of complainant's amended bill of complaint.

NINE: Defendants deny all of the allegations set forth in the ninth paragraph of complainant's amended bill of complaint.

TEN: Defendants deny all of the allegations set forth in the paragraph tenth of complainant's amended bill of complaint.

ELEVEN: Defendants deny all of the allegations
89 set forth in the eleventh paragraph of complainant's amended bill of complaint.

TWELVE: Defendants deny all of the allegations set forth in the twelfth paragraph of complainant's amended bill of complaint, except that having no personal knowledge thereof defendants neither admit nor deny that the National Exposition Company is a New York Corporation, or that it is engaged in organizing and managing expositions of various kinds in New York City.

THIRTEEN: Defendants deny all of the allegations set forth in the thirteenth paragraph of complainant's amended bill of complaint.
90

FOURTEEN: Defendants deny all of the allegations set forth in the fourteenth paragraph of complainant's amended bill of complaint.

FIFTEEN: Defendants deny all of the allegations set forth in the fifteenth paragraph of complainant's amended bill of complaint.

SIXTEEN: Defendants deny all of the allegations

set forth in the sixteenth paragraph of complainant's amended bill of complaint.

SEVENTEEN: Defendants deny all of the allegations set forth in the seventeenth paragraph of complainant's amended bill of complaint.

EIGHTEEN: Defendants deny all of the allegations set forth in the eighteenth paragraph of complainant's amended bill of complaint.

NINETEEN: Defendants deny all of the allegations set forth in the nineteenth paragraph of complainant's amended bill of complaint. 92

TWENTY: Defendants deny all of the allegations set forth in the twentieth paragraph of complainant's amended bill of complaint.

WHEREFORE, these defendants pray that complainant's amended bill of complaint be dismissed, with costs to be paid by the complainant.

FRANK X. SULLIVAN,
Solicitor for Defendants Emil
J. Deering, William Bramley and Michael T. Neyland,
Office & Post Office Address,
No. 25 Liberty Street, 93
Borough of Manhattan,
New York City.

FRANK X. SULLIVAN,
FRANK L. MULDOON,
Of Counsel.

94 Answer.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

EMIL J. DEERING, being duly sworn, says that he is one of the defendants in this action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

EMIL J. DEERING.

95 Sworn to before me this
8th day of June, 1914.

DANIEL F. DUNN,
Notary Public,
Kings Co., No. 50.

Register's Office No. 6042.
Filed New York Co. Clerk No. 63, Register No. 6115.
Commission expires March 30, 1916.
(Seal)

96

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

WILLIAM BRAMLEY, being duly sworn, says that he is one of the defendants in this action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

WILLIAM BRAMLEY.

Sworn to before me this
8th day of June, 1914.

DANIEL F. DUNN,
Notary Public,
Kings Co., No. 50.

Register's Office No. 6042.

Filed New York Co. Clerk No. 63, Register No. 6115.

Commission expires March 30, 1916.

100 *Answer.*

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

MICHAEL T. NEYLAND, being duly sworn, says that he is one of the defendants in this action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

MICHAEL T. NEYLAND.

101 Sworn to before me this
8th day of June, 1914.

DANIEL F. DUNN,
Notary Public,
Kings Co., No. 50.

Register's Office No. 6042.

Filed New York Co. Clerk No. 63, Register No. 6115.

Commission expires March 30, 1916.

(Endorsed: Filed U. S. District Court, S. D. of N. Y., Jun. 9, 1914.)

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Case. 103

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

DUPLEX PRINTING PRESS COMPANY,
Complainant,

vs.

EMIL J. DEERING and WILLIAM BRAMLEY, individually and as Business Agents of District No. 15 of the International Association of Machinists; MICHAEL T. NEYLAND, individually and as Business Agent of Local Lodge No. 328 of the International Association of Machinists, and EDWARD F. NIELSEN, individually and as Business Agent of Riggers' Protective Union; JACOB J. KEPPLER, individually and as Vice-President of the International Association of Machinists,
Defendants.

In Equity. 104
11—166.

New York, Tuesday, January 16th to 18th, 1917, and February 28th, 1917. 105

Before:
Hon. MARTIN T. MANTON,
District Judge.

APPEARANCES:

Messrs. AUSTIN, MCLANAHAN & MERRITT, by WALTER GORDON MERRITT, Esq., for Plaintiff.

FRANK X. SULLIVAN, Esq., and CHARLES HARTMAN, Esq., for Defendants.

106 *Deposition of George Preston.*

(Mr. Merritt then read from deposition of GEORGE PRESTON as follows:)

"I am fifty years of age, reside at 1921 35th Street Northwest, in the City of Washington, D. C., and ever since July, 1895, have been general secretary and treasurer of the International Association of Machinists. I served my lawful times as a union machinist, and have been connected with this association since September, 1899. The International Association of Machinists is an unincorporated association, having between seventy-three and seventy-four thousand members, and having affiliated
107 about 850 local unions, which are located throughout the United States and Canada, including also two lodges in the Canal Zone, Panama. In every state of the United States there are affiliated local unions. The International Association, as a general thing, is subdivided into districts, which are voluntary institutions composed of representatives of local unions within that jurisdiction. The local union pays a per capita tax to the district for the maintenance of the general interest of the craft within its jurisdiction. There are only fifteen districts, of which one is District 15, having jurisdiction in New York City, and having a printed constitution. District 15 has jurisdiction over Greater
108 New York and one or two locals in New Jersey. Since 1886 (which was about a year after the formation of the International Association) it has published a periodical, first in pamphlet form and finally in a ninety-six-page monthly issue, which is called *The Machinists' Monthly Journal*, and this journal is circulated through all of the local lodges and on news stands. Sufficient copies are sent to each secretary of each local lodge to supply each member of the local who desires it, and it is un-

derstood that a part of the per capita tax is set aside for the journal. There are also paid subscribers. I have no difficulty in identifying the document which you hand me as the *Journal* for October, 1913, and the roster of lodges, giving the names of the business agents of the district lodges, local lodges, etc., is a correct statement of the matters contained on that page, and on page 1067, under the head of 'Business Agents,' appears the following: 'New York, N. Y.—M. F. Neyland, E. J. Deering; Wm. Deans, 110-116 Nassau Street, Rm. 602, Morton Building,' which means that the men therein named were business agents at that time, and that their official headquarters was 110-116 110
Nassau Street, New York City. E. J. Deering and M. F. Neyland, whose names appear in this *Journal*, are defendants, and they, together with William Bramley, were representatives of the district, and were elected by the district. William H. Johnston has been president of the International Association since January, 1912, and J. J. Keppler has been vice-president for approximately seven years. The International Association has been affiliated with the American Federation of Labor since about November, 1895, and with the Metal Trades Department of the American Federation of Labor, which has been in and out of existence for several years, at all times when it was in existence, and said 111
Metal Trades Department has been in existence continuously for four or five years."

(It was stipulated and agreed that the following extracts from reports of Vice-President Keppler, taken from the respective numbers of the *Machinists' Monthly Journal*, might be offered in evidence with the same force and effect as if the original

copies of the *Journal* were returned to the Court with this deposition, but with the understanding that all other objections to their admission were reserved:)

(Issue of October, 1913.)

"August 22, I drafted a letter setting forth conditions for the inauguration of an eight-hour day, wage scale, overtime rates, apprenticeship system, etc. The same was mailed to the Duplex Printing Press Company, of Battle Creek, Mich., also to some other employers in this industry, who are now op-
113 erating on the eight-hour basis, as they had claimed that unless something was done with these ten-hour shops they, the eight-hour shops, would again be forced back to longer hours. I regret to say, however, that just about the time this letter reached the Duplex Printing Press Company word was received from Battle Creek that eleven of our members had been discharged, which was closely followed by eight more being let go, discrimination being alleged.

"As the General Executive Board, during its session in June, this year, had sanctioned a strike at the Duplex Printing Press shop, and other ten-hour shops in the printing machinery industry, there was nothing else to do but to carry out their
114 instructions, and, therefore, wired our local organizer, Brother Thompson, who was on the ground, to declare a strike, which was done August 27. This company was also working ten hours a day, or fifty-nine hours per week, and starting machinists to work at as low a rate as twenty cents per hour. It is to be regretted that this strike had to take place at this time, but as we have held many conferences with this concern without coming to any agreement, nothing else was left to do

but to carry out instructions of our G. E. B. Our road men have also been called.

"While on this subject, and in Battle Creek at this writing, it may be well to mention the fact that this fight will undoubtedly be a bitter one, as this shop is located in the town of 'Post-ism,' and all know his attitude toward labor, but as the pressmen and printers' internationals have signified their willingness to assist wherever possible, and with our own members and other metal trades doing their part, there is no reason why we cannot in time bring this company to the realization that we mean to establish the eight-hour day in the printing industry, with wages similar to those paid elsewhere for eight hours. Letters have also been sent to our organizers, business agents and all interested parties urging them to be on the lookout for presses coming into their locality from the Duplex Company. Much will depend on the outcome of this strike as to what may be expected in other nine and ten-hour shops, and if we are to maintain the eight-hour day where it now prevails, also where it will be possible to inaugurate it January 1, 1914." 116

(Issue of November, 1913.)

"Having made a previous appointment, my presence was required at Battle Creek, Mich., to confer with the Duplex P. P. Company, relative to the strike on there since August 27, but it is to be regretted that while our conference was lengthy and as friendly as ever before, the question of eight hours remains unsettled, but our boys are surprising all with the stand they are making to break the old ten-hour day and inaugurate the eight-hour day, with wages something similar to those paid in the printing machinery industry where the eight-hour day now exists. It may be well to call to the 117

attention of our members that the Grand Lodge endorsed Battle Creek's letter of appeal for finances, and since has sent out letters to all Allied Printing Trades Councils, printers, pressmen, photo engravers and stereotypers' locals urging their moral assistance to bring the strike at the Duplex P. P. Company to a successful termination. Further to say to our general members that our road men are also on strike and it is necessary to acquaint all when coming in contact with such machinery that no member of the I. A. of M. is employed at the Battle Creek shop, nor has any machinist of the I. A. of M. a card or right to install
119 such work.

"Now, brothers, as this company has for years operated under long hours and lowest pay in this industry, we must win this struggle if we hope to hold the eight-hour day where it now exists or where provided for, or if we hope to protect the homes and families of our members in Battle Creek."

(Issue of December, 1913.)

"Conference was also held in Chicago with the printing pressmen relative to Battle Creek Duplex Printing Press eight-hour strike, also with other printing tradesmen. They have been in touch with
120 this company, all of which seemed to be of great benefit to us, and as I have been constantly in touch with Battle Creek, and our boys waging a good fight for eight hours, we hope success will crown their good efforts.

"While in Chicago, President Johnston and I attended shop meeting of Goss Printing Press Co. men, after which we conferred with the company, they again assuring us that they would grant eight hours with 41 cents minimum, January, 1914.

This the men seemed to have doubted, but suppose now that President Johnston has also assured them of same, they will be better satisfied."

(Issue of February, 1914.)

"I also visited Battle Creek, Mich., and met with our eight-hour strikers of the Duplex Printing Press Company, found all standing firm, excepting two whom the company influenced to return to work. However, since my visit there and through the assistance of the printing trades three conferences have been held in New York with the president of the Duplex Company, and while no settlement can be reported at this time, another conference is arranged for about January 22 or 23 in New York, and it is safe to say the eight-hour day will be forthcoming, but wages must be regulated for the future. This company has admitted that much harm has been done them on the outside, with many publishers having cancelled orders and their machinery not being erected, so I would again suggest that no matter what our next conference may bring forth, for all to get in touch with the local printing tradesmen and acquaint them with the ten-hour and low wage policy of the Duplex Printing Press Company, and keep it up until a satisfactory settlement has been officially reported." 122

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(Issue of March, 1914.)

"Several conferences were also held again between Mr. Stone, president of the Duplex Printing Press Co., at Battle Creek, Mich., representatives of New York Allied Printing Trades and myself. This company is now operating on an eight-hour basis, but reduced wages of those now employed by them, and finally submitted the following, which was promptly rejected by me, as it meant nothing:

121 *Case.*

"'January 30, 1914.

"'I will recommend to the Board of the Duplex Printing Press Company that we reduce our hours for labor in our factory to eight per day.

"'J. L. STONE,
"'President.'

"The company was given to understand that before the strike was settled the question of eight hours, wages, reinstatement of our men, future employment, apprentices and overtime rates would need to be agreed to, so the strike is still on, but I
125 received a letter from Mr. Stone in which he said he would put the entire matter before his Board of Directors. I would therefore again urge our people to appoint a committee in their locality and put facts before the Allied Printing Trades that we are still on strike at the Duplex Printing Press Co., of Battle Creek, Mich.; also at the Oswego Machine Co., of Oswego, N. Y., builders of paper cutting machinery."

(Issue of April, 1914.)

"March 2, 3 and 4 found me with some of the allied printing trades and finally with Brothers Deering and Stilgenbauer, of New York. We had a
126 conference with international officers of the I. T. U., and believe a better understanding was arrived at, especially relative to the construction work which should not only help organize the shops, but should assist us in maintaining same with the eight-hour day throughout.

"As stated herein, I was on my way to St. Louis, leaving New York with Brothers Stilgenbauer, Neyland and Vice-President Jennings. We were detailed to stop in Chicago en route, so last night

we had the pleasure of attending the meeting of my old lodge, No. 253, and for to-night I understand the Chicago business agents have a general mass meeting arranged, after which we depart for St. Louis, to attend general conference arranged by our G. E. B., during which meeting we hope a general policy can be outlined that may meet with the approval of the rank and file and finally mean eight hours."

(Issue of May, 1914.)

"Letters have also been sent to all of our representatives urging them to acquaint allied printing trades of the unfair methods of the Duplex 128
Printing Press Co., of Battle Creek, Mich., and the Oswego Machine Co., of Oswego, N. Y., as our members are on strike there for eight hours, so it would not be amiss at this time to also request all of our members to be on the lookout for such machinery coming into their locality."

(Issue of June, 1914.)

"A further trip was necessary to Chicago, where I again met President Johnston, and our attorney, Brother Mulholland, and after going over various matters Brother Mulholland and I visited Battle Creek, then Albion and Jackson, Mich., and Toledo, 129
Ohio.

"Brother Mulholland is looking after our end of the court proceedings that were instituted by the Duplex P. P. Co., of Battle Creek, against our association, endeavoring to restrain us and other organized labor from interfering with the erection of their presses in New York and elsewhere. This was started during the recent exposition in New York of printing machinery. This bill of complaint set forth by them looks as if it may be far-reaching,

but I am satisfied that we have been within the law and our rights in our endeavor to secure the eight hour day. Time will tell what they have up their sleeve."

(Issue of July, 1914.)

"Conventions of printing pressmen, stereotypers and bookbinders, held in Rogersville, Tenn., Newark, N. J., and Denver, Colo., respectively are being looked after, and the Battle Creek Duplex P. P. Co. strike will be taken care of."

131 (Issue of August, 1914.)

"At the pressmen's convention, which Organizer Davison attended, reports show progress in extending our working agreement and passing resolutions relative to the Duplex P. P. Co. strike in Battle Creek, Mich. The same may be said of the bookbinders' and stereotypers' conventions."

(Issue of September, 1914.)

"July 1 a strike was called against the Whitlock P. P. Co., and as near as we could learn forty-five I. A. of M. members with sixty-five non-union machinists and apprentices responded. Up to that time the company's weekly working schedule was
132 fifty-nine hours per week, but owing to rush of business they were working their men three hours overtime.

"This company had always refused to consider the shorter workday that was being brought about in the printing machinery industry, but always held to the old ten-hour day. So, as they had a New York order for twenty-seven presses, we knew full well that if ever there was a time to make any inroads toward the eight-hour day, or convince those

employers in the same competitive market, who had already granted the eight hour day, it was up to our association to make good, which we did July 1. At that time there were eleven presses finished, seven of which were under construction by our members in New York City, and four still in the docks. Our construction men were called on strike when the shop men went out, and with them came twenty-eight other members who were installing other machinery in what is known as the Hill Publishing Building, which was still under construction.

"This went on for a few days, when they threatened to move in with non-union help. Then on 134
July 14 the building trades became interested and twenty-one building trades called their men to enforce union conditions on the building. The machinery was again turned back, as about two hundred building tradesmen struck. In addition to thirty-two members we had involved from the various companies having their machinery installed, all told the following number of employers were involved: The building contractor, eighteen subcontractors, three rigging companies, three publishing companies, twelve printing machinery firms, and nine firms installing other machinery for building, so on July 18 an understanding was reached by parties involved that all work would proceed July 20, provided none of the Whitlock presses would be 135
put into the building, or none but union help would be employed.

"After this many people became interested and tried to settle the strike. Finally the New York board of mediation was brought into the controversy, and after numerous conferences, a proposition was submitted to the men on strike August 1, that was accepted by them, which carried with it the fifty-four hour week, with four hours extra

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pay, and all hands to return to former positions August 4."

(Issue of October, 1914.)

"August 10 was the opening day of the International Typographical Union Convention in Providence, R. I., with New York Business Agent Deering, Secretary Stilgenbauer, of Eureka Lodge, No. 134, and myself in attendance.

"There were about 300 delegates present, with about the same number of visitors, including many members of their Ladies' Auxiliary.

137 "Our mission was to bring about more harmonious relations between the I. T. U. and our association, to the end that an organization may be brought about in the shops where typesetting and typecasting machines are being manufactured. Our Providence Business Agent, Brother Buckley, with Organizer Gilmour, gave us all their spare time in meeting various delegates and explaining our mission.

"The question involved was one of the I. T. U. having their members working in assembling rooms where such machinery was being manufactured, also the right of installing, erecting or repairing such machines after they left the shops. This question was referred to the committee on officers' re-
138 ports, before which committee we had a hearing, and when their report was made to the convention I was granted the privilege of explaining our side to the delegates, after which the committee's report was accepted. The same granted jurisdiction to the I. A. of M. over all our claims in the shops, which requires their members who are now engaged on such work in shops to transfer into the I. A. of M. The question of installing such machines in composing rooms was not definitely settled, but

will again be taken up with the I. T. U. executive board and our association. In the meantime both organizations are working in harmony, especially in Greater New York, where two of the largest firms engaged in this line of manufactures are located. I would be pleased to hear from our various localities just what portion of this work is done by our members when typesetting or typecasting machines are being installed or repaired."

(Issue of November, 1911.)

"Our G. E. B. being in session that week, some questions came before them, in which I took part; 140
one in particular being the court proceeding instituted by the Duplex P. P. Co., of Battle Creek, Mich., also the New York erectors' proposition, and it was finally agreed that G. E. B. Member Fechner should pay New York a visit after adjournment and convey to our members the action of the G. E. B."

Organizer Davison, referred to in one of the foregoing *Journals*, was an organizer, authorized to work by the Grand Lodge, which employs from two or three to fifteen organizers. The International Association has a general executive board, which prints and publishes the minutes of its meetings, and circulates separate copies to each local 141
lodge upon the understanding that additional copies may be had on application. In the *Journal* for April, 1911, appears the following statement:

"Machinists who go to New York and vicinity to work, install or repair machinery must report at the office of the business agent of District No. 15, 110-116 Nassau Street, before starting on the job."

Mr. Sullivan: I move to strike out all these reports, except the one of April, 1914, which is the only place wherein defendants were mentioned in connection with the strike. There is no connection between the defendants and any of these acts or reports, or any mention of any conspiracy or illegal acts.

Motion denied. Exception.

Mr. Merritt: I now read two letters, which it is admitted were sent out by Vice-President Keppler at or about the dates which they bear.

143 (Mr. Merritt then reads letter of October 10, 1913, as follows:)

"International Association of Machinists,
"District Lodge No. 15.

"Oct. 10th, 1913.

"Dear Sirs and Brothers:—

"Greeting.

"Eight (8) Hours—That's all.

"For many years past organized labor has endeavored to secure shorter hours and better conditions in Battle Creek, Mich., in the City of Long

144 Hours, Short Pay and Postism.

"During this time the Duplex Printing Press Co., of Battle Creek, has been most hostile towards the inauguration of the eight (8) hour day in the printing machinery industry, but operated their plant on (59) hour week basis, with wages about one-half paid mechanics in this industry where the eight (8) hour day is now in operation, as well as systematically discriminating against organized labor from time to time.

"There are approximately 100 employers of machinists and other craftsmen in this industry—among them the largest (outside of publishers and newspaper offices) who are either working eight (8) hours per day or eight and one-quarter (8¼) hours per day with understanding that the eight (8) hour day will be inaugurated 1914. So that you can see it is only fair for us to endeavor to get all such employers on equal basis, especially as to hours, wages, overtime rates, and apprenticeship system.

"Our purpose in addressing you and your members at this time is to acquaint all of the fact that after carrying on negotiations with this company 146
from time to time during the past two years and all efforts failing (the company finally discriminating against a good number of union men) the International Association of Machinists was finally compelled to declare strike against this company Aug. 27, other metal mechanics also becoming involved.

"Further, as this company's presses are shipped to all parts of the country, generally in contact with union men, and as our road men are also on the strike, we urge you to bring this to the attention of allied printing trades in your locality, thus acquainting them of this company's most unfair attitude towards organized labor, and if possible influence your employer not to have such machinery 147
installed by unfair men, or that they will not let any more contracts to the Duplex P. P. Co. until organized labor is fairly dealt by.

"We would further urge you or your members to see to it that when machinists install or repair any printing machinery in your establishment that they carry cards in the I. A. of M., as there are some other firms who have not as yet agreed to eight (8) hours, and this will have a tendency in bringing them to terms.

"Trusting you and your associates will render all assistance possible so this struggle for eight (8) hours, better wage, with protection of home and family, will be successfully terminated at an early date.

"We are, with best wishes for success and (8) hours.

"Fraternally yours,

"J. J. KEPPLER,
"Int'l Vice-Pres.

"W. H. JOHNSTON,
"Int'l Pres."

Mr. Sullivan: I object to the reception of that letter.

The Court: Will you show some connection later between this man and this union?

Mr. Merritt: I will show the connection between Keppler and the other defendants.

The Court: I will take it on that promise, subject to a motion to strike out.

(Mr. Merritt then reads letter of April 4, 1914, as follows:)

"INTERNATIONAL ASSOCIATION OF MACHINISTS
"District Lodge No. 15

"April 4, 1914.

"To the G. E. B.; Vice Presidents; Business Agents; and Organizers.

"EIGHT HOURS—THAT'S ALL.

"Greeting:

"During the recent St. Louis Conference the Committee on Printing and Paper Making Ma

chinery reported on that Industry, and a transcript of that report is here reproduced; as follows:

"'That all representatives of the I. A. M., when organizing in various localities, shall endeavor to attend the local Allied Printing Trades Council meetings from time to time, urging the members of the Allied Printing Trades to demand the I. A. of M. due books of Machinists, who may be installing or repairing machinery. Also, to make it known that our members are on strike for eight (8) hours, against the Duplex Printing Press Co. of Battle Creek, Mich. and the Oswego Machine Co., of 152
Oswego, N. Y.—the latter are builders of paper cutting machinery—requesting them to assist wherever possible, to prevent the installation of this unfair machinery, and also, persuade if possible, fair employers from letting further contracts for machinery to either of these firms.'

"Copies of the enclosed letter have also been mailed to all Allied Printing Trades Councils, and locals, and have produced results.

"At this time, it is most essential to again acquaint all Organized Labor, with the unfair attitude of the Duplex Printing Press Co. and the Oswego Machine Co. The Duplex Co. has finally put their plant on an eight (8) hour day basis, 153
but they still refuse to reinstate our striking members, or to adjust the wage scale.

"We feel that if our representatives will attend the meetings of the Allied Printing Trade Councils at this time, placing the facts before them, and urging them to comply, as nearly as possible with the contents set forth in the enclosed letter that a settlement will be reached in the near future.

"I would also suggest that you solicit from our local Lodges, in compliance with the letter sent out

by the Grand Lodge, for our brothers on strike at Battle Creek. Send all donations to Sec'y Preston.

"Trusting that you will comply with this most urgent request and that the undersigned may hear from you also, as to the progress made in your locality towards the eight (8) hour day, in the Printing and Paper making Machinery Industry, I am, with best wishes for success and EIGHT (8) HOURS.

"Fraternally yours,

"Int. Vice President
"J. J. KEPPLER

155

"This is union-made paper."

Mr. Sullivan: That letter will be received under the same reservation?

The Court: Yes.

Mr. Merritt: I am going to read from the proceedings of the conference of the general officers of the International Association of Machinists, held at St. Louis, Mo., on the date of March 9th to March 14, 1914, the authenticity of which the defendants admit. First I will read from the report of President W. H. Johnston.

156 Mr. Sullivan: I object to that, unless you can connect Mr. Johnston. Do I understand you are going to connect him as well as Keppler with the defendants? I am representing three men here.

Mr. Merritt: I will connect him before I finish this document. There were present at this conference J. J. Keppler, William Bramley, M. J. Carney, E. J. Deering, J. Stilgenbauer, M. Neyland, H. V. Riley, William H. Johnston, and others.

Mr. Sullivan: I still object.

The Court: Do you concede that these men were present?

Mr. Sullivan: But I do not think it is any evidence of their conspiracy against the Duplex Company.

The Court: I will take it.

Mr. Sullivan: Exception. My main objection is that there is no connection—that the subject is too remote.

(Mr. Merritt then read from the proceedings of the Conference of General Officers of the International Association of Machinists, held at St. Louis, Mo., from the 9th to the 14th of March, inclusive, as follows: Page 5, Proceedings of March 9th, 1914, Mr. Conlon calls the roll, which shows that among those present were the following: J. J. Keppler, William Bramley, M. J. Carney, E. J. Deering, G. Stilgenbauer, M. Neyland, H. V. Riley, William H. Johnston and over fifty others.) 158

Mr. Sullivan: Same objection.

Objection overruled; exception.

Mr. Sullivan: There is nothing in the record to show that these men were in the hall or in the room at the time the statements were made. These men were at the Convention as delegates, but there are many things said in conventions that a man might not agree with at all. 159

(Mr. Merritt then read from pages 1 and 2 of proceedings of March 12th, as follows:)

"Roll call showed all present. * * *

"President Johnston: We will now have the report of the Committee on Printing Machinery.

"Brother Stilgenbauer reads report of committee as follows:

"'We, your Committee on Printing and Paper Making Machinery Industry, beg leave to report for your consideration and endorsement of the G. E. B. as follows:

'Resolution No. 21 in proceedings of Davenport Convention reaffirmed, for the purpose and object of said resolution, namely, the establishment of eight-hour day and uniform working conditions be extended to apply to all branches of the printing and paper machinists, specialists and apprentices
161 engaged in this industry shall affiliate themselves with some local lodge located in the district having the jurisdiction over the manufacturing or repairing of any and all such machinery; and we further recommend if a local should insist such local shall become affiliated with the nearest district and Business Agent be requested to visit said locals at regular stated intervals and report to the International Vice-President in charge of said industry. This applies to all firms engaged in any manner in the making, installing, erecting, maintaining, dismantling, assembling, repairing parts thereof, or tools therefor for all printing and paper-making machinery, such as priating presses, photo en-
162 graving, folding, feeding, bookbinding, stitching, paper cutting, sterotyping, electrotyping, mailing, linotype, monotype, auto plate, typesetting, paper making, or wall paper printing machinery of any description. Fundamental principles to be adhered to when negotiating agreements of working rules shall be: Employment of our members; eight hour day; minimum wage; overtime rates; classification of our work; apprenticeship system.

'Further, that we continue our efforts through

conferences with representatives, or through conventions (of allied printing trades, paper makers or metal trades) to secure, if possible, working agreements and co-operation whereby all may work jointly for the final establishment of eight hour day, and at the very earliest possible opportunity, final date to be set by G. E. B.

'Further, that all I. A. of M. representatives when organizing in various localities, shall endeavor to attend local allied printing trades council meetings from time to time, urging that members of allied printing trades demand the I. A. of M. due books of machinists who may be installing or repairing machinery; also make it known that our members are on strike for eight hours against the Duplex Printing Company of Battle Creek, Mich., and the Oswego Machine Co. of Oswego, N. Y., builders of paper cutting machinery, requesting them to assist wherever possible to prevent installation of this unfair machinery, and also persuade, if possible, fair employers from letting further contracts for machinery to any of these firms. 164

'J. J. KEPPLER,
'HUGH REILLY,
'A. ROBINSON,
'R. L. HALL.'

"President Johnston: You have heard the report of the committee. What is your wish regarding same? 165

"Motion made and seconded that report of the committee be adopted. Motion carried."

(Mr. Merritt then read from proceedings of March 14th, 1914, page 1, as follows:)

"Roll call showed all present, except W. H.

Mitchell who was compelled to leave to fill an engagement with a local lodge. * * *

'To be considered a part of the report of the Committee on Factory Trades Jurisdiction.

'To owners, Architects and Contractors —

'Greeting:

'You are requested to insert in all future contracts entered into by you,

'That none but members of the International Association of Machinists be employed in the building, assembling, erecting, dismantling, or repairing of
167 machinery, in machine shops, buildings, factories or elsewhere where machinery may be used.

'This is the jurisdiction recognized by the American Federation of Labor and the United Board of Business Agents of the Building Trades of Manhattan and vicinity.

'By taking cognizance of the above, in drawing up contracts in the future, complication can be avoided that might occur if the above is not taken into consideration.

'Trusting you will give this matter your attention, we remain,

'Respectfully yours,

168 'THE UNITED BOARD OF BUSINESS
AGENTS OF THE BUILDING TRADES
OF MANHATTAN AND VICINITY.

'Attest:
'ROSWELL D. TOMPKINS,
'Secretary and Treasurer.'"

(Mr. Merritt then read from proceedings of March 14, 1914, pages 21 to 23, as follows:)

"By Vice-President Keppler.

"Mr. President and Brothers:

"* * * Let us take the responsibility upon ourselves and stand up for what is right and what we are striving for, to the end that all officers, districts, local lodges and members thereof will unite with us and work in accord toward at least some fundamental principles for which our Association stands; namely, the employment of our members, jurisdiction of work, eight-hour day, apprenticeship system, minimum wage, control of our output, general overtime system, one day's rest in seven, arbitration and conciliation for adjustment of grievances, thus reducing strikes to a minimum; sanitary shop conditions and the proper use of our ballot, to the end that we may bring about that set forth in our platform, which will benefit all producers" (p. 21). 170

"Before finally submitting all propositions to a referendum, to our members in 1904, our committee had held conferences off and on for two months and, as said before, we broke on the classification clause, which the employers tried to extend to provide for specialists. Our members voted for strike, and strike it was to the extent that thirty-two shops were called; while numerous settlements were made, and with the Goss P. P. Co.'s strike lasting nine months, it may also be said that to-day very few agreements are in progress with those same employers, the Goss P. P. Co. having an agreement today with us providing for an eight hour day, of which mention will be made later—but same was 171

only brought about after we were able to prevent installation of their presses on the outside" (p. 22).

"During the year of 1909, I had the pleasure of attending two conventions, one of the Printing Pressmen, held in Omaha, Nebraska, and of the Photo Engravers, in Milwaukee, Wisconsin, during which time a better understanding was reached whereby their members have demanded I. A. of M. cards when machinery was being installed or repaired in printing houses. That in itself has helped us not only to organize some firms, but has been the means of maintaining organization and securing the long looked for eight hour day for our members in localities where organized, with greater pay and better working conditions. Further, it was the means through which numerous other firms granted better conditions; among them, permit me to mention a few facts relative to the R. Hoe & Co. of New York, they being the largest in this line, where the following was secured since 1909, and starting with practically no working organization" (p. 23).

173

Mr. Sullivan: I object to the reception of that. I do not see how that in any way can touch upon the subject of the Duplex Printing Press Company, a report on something which was done on the Goss Printing Press Company.

174

The Court: I will take it.

Mr. Sullivan: Exception.

(Mr. Merritt then read an extract from the report of Vice-President Keppler on page 25 of same proceedings, as follows:)

"Strikes have also been in progress in this line for some time for eight-hour day at the Oswego Machine Co. of Oswego, New York, and the Duplex

P. P. Co. of Battle Creek, Mich.; both had been operating on the ten-hour basis.

"While conferences are being held with various employers in the industry, the cry of their competitors is continually heard, especially referring to these firms mentioned in the *Organizer* of October 25, 1913.

"Vice-President Keppler wishes to again call your attention to the fact that a majority of the printing firms of New York City and Plainfield have granted an eight hour day on the installment plan, and unless their competitors are brought to the same terms we are liable to lose all the conditions we have already gained, or face a big strike of printing machinery shops in the spring. You are therefore urged to get busy on the list of firms that will be appended to this issue of the *Organizer*." 176

Same objection, ruling and exception.

(Mr. Merritt then read from the same report on pages 28 and 29, as follows:)

"If it were only for the purpose of organizing machinists who are now directly employed on construction work, I would say but little about it, but when we consider that elevator shops exist in nearly all principal cities and operated in all buildings of practically any size, and that the controlling of this industry, will put us in a position to eventually control our output, thus making us a power in the building trades, as well as in the general labor movement, and enable us at most all times to assist in settling our grievances in the shop by our construction machinists refusing to handle or erect unfair machinery, which at the present time is usually installed in many localities by other tradesmen, but nevertheless it's still machinist's work and we must secure same for our men. 177

"Think of the power it would give us, as well as other metal trades, if we had an international agreement in the elevator industry, carrying with the same the eight hour day in the shops as well as for the construction work, which in mind can be secured if we get together, work jointly, and take active action at the opportune time.

* * * * * *

"All of such employers depend largely upon having their machinery installed from time to time in buildings which should give us thousands of construction machinists employed throughout.

179 "Can you imagine a strike in a shop of some of these great industries, but what these men would be able to assist in settling, or can you imagine the contractor or architect allowing their building tied up any length of time without the proper machinery being installed, or the employer who has already paid for his labor in making the machinery, closing his shop simply because our men would refuse to erect his unfair machinery until he dealt fairly with his shop men?

"We should also remember that if one job should get away, there are many more buildings going up, but if once a machine shop turns scab, it's usually a scab monument for a long time, unless we can bring some pressure to bear on the outside. The
180 trouble has been, we have depended on others, helping us too much—we must learn to help ourselves.

"It is very true that all industries will not be directly benefited by getting control of our output, or perhaps there are localities where no such work is being manufactured, but look around your city and see if there is not some such work being installed from time to time that should be done by our members."

181

Same objection, ruling and exception.

(Mr. Merritt then read from the report of J. J. Kepler in same proceedings, at pages 31 and 33, as follows:)

"PRINTING PRESSES.

"The erection of printing presses of all descriptions, folders, paper cutting machines, stereotype, photo engraving and the various other types of machines around printing offices and pressrooms, make considerable work for our members, inasmuch as the various plants are continually adding to their equipment or moving from one location to another, necessitating the taking down and putting up again of these machines. 182

"We have no dispute with any organization concerning this work, outside of the carpenters, who got in on one job in the last few years—we succeeded in getting them off, and aside from some little trouble they make for us occasionally over the installing of shafting and hangers in these plants, we doing very nicely and are performing all the above-mentioned work in this line.

"There are many other forms of machines and apparatus that we are installing and erecting; however, the classes mentioned are sufficient to demonstrate the kinds of work we are performing.

"Local No. 126 has nearly 500 men, some 10 of whom are helpers, working on this work. The helpers are nearly all working in the elevator erection line, inasmuch as when we started on this work we found that helpers were being used to a great extent: in fact, about two-thirds of the constructors were helpers. It was necessary for us to provide along the same lines to begin with. Since that time we have reduced the helpers to a ratio of one helper to two mechanics, and we have continued 183

work to such an extent that he is of no great value to the contractor; he is gradually becoming extinct.

"We have discussed at some length and have information a plan to eliminate the helper entirely, by the use of apprentices when we can get some of our jurisdictional fights out of the way and have no fear of another organization making agreements with our contractors.

"Summing up in conclusion, from the past experience of our organization, should be apparent to all that we are wasting most of our substance and energy in unsuccessful conflicts with the em-
185 ployers, and history will show we become about so strongly organized and accumulate about so much of a fund in our treasury, when our members become involved in some disastrous strike and our organization loses a great percentage of its members and all of its funds. In no other way, in the opinion of the writer, than by a strenuous campaign to control the erection of the products of all machine shops throughout our jurisdiction can this situation be changed. It is near time that we realized that the employer can surround himself with enough protection in times of strike to manufacture his product. We are almost convinced that there are enough men in this country to man the places relieved, men who have some knowledge of
186 the trade and are willing to assist the employer, regardless of the fact that they should ally themselves with us, instead of the employer.

"And, again, we must admit that in this day of specialization that machinists can be made in less than four years; in fact, if records could be had of the strikes since 1900, I dare say you would find the employers during these strikes have made more machinists than we have in our International organization, and many of them it did not take four

years or scarcely that many months to teach them how to perform some particular part of our trade, and shortly afterwards, to turn them out through some course to compete with our men in securing positions, and they do secure positions, somehow regardless of their lack of ability, and then we organize them or attempt to do so, with the result that we have trouble keeping them at work under union conditions and finally they drop out of the organization to again become a free lance and strike breaker; on the other hand, the acceptance of these men into our organization disgruntles a good percentage of real machinists in the Order, with the result that some of them drop out again when we commence to organize. 188

"Would it not be better to fight for the control of the erection of the product of these shops? We have nothing to lose and everything to gain, and we can show that in every case where we have gained absolute control of the erection, there has been no trouble in organizing and keeping organized, the shops where the product was manufactured. It is a natural conclusion that if the manufacturers knows his product is to be erected by union machinists, he will be careful about any question arise in the shop that may stop the erection on the job, as it must be put into operation before he gets paid for his product." 189

Mr. Merritt: I want to offer in evidence certain resolutions passed at the proceedings of the 26th Annual Convention of the International Printing Pressmen and Assistants' Union of North America, held at Rogersville, Tenn., in June, 1914.

Mr. Sullivan: I object to the proceedings of any other organization, on the ground that these defendants are not bound by them, but

190 *Case.*

we concede that these are the proceedings of that convention as stated.

The Court: I will take it.

Mr. Sullivan: Exception.

(Mr. Merritt reads resolutions as follows:)

"Proceedings of the Twenty-Sixth Annual Convention. International Printing Pressmen & Assistants' Union of North America. Held at Printing Pressmen & Assistants' Union Home.

191 "Rogersville, Tennessee.

"June 15-20, 1914.

"Third Day, Wednesday, June 17, 1914.

"PROPOSITION No. 18.

"Whereas, The Duplex Printing Press Company, of Battle Creek, Michigan, have placed on the market a press known as the Duplex tubular plate printing press for newspapers of twelve pages or under; and

"WHEREAS, Through their agents they have misrepresented their press to the publishers whereby they claim their press can be operated with less men
192 than the union contracts with the American publishers' association call for, and

"Whereas, They have been unfair to their machinists and where they locked out eleven machinists on August 20, 1913, and later, on 22d of August, without any cause locked out seven more officers of the union and committee and have been invariably unfair to union labor wherever employed; therefore be it

"Resolved, That the International Printing

Pressmen and Assistants' Union in their Twenty-Sixth Annual Convention assembled, do hereby disapprove and condemn their action in misrepresenting their presses to prospective buyers, and which has been a detriment to our local unions in their working conditions throughout the country.

"Whereas, They continue to misrepresent their press, be it further

"Resolved, That the International Printing Pressmen and Assistants' Union in Twenty-sixth Annual Convention assembled, adopt these resolutions and a copy sent to the Duplex Printing Press Company, of Battle Creek, Michigan, and a copy be spread on the minutes of this convention, and a copy sent to the American Pressmen for publication. 194

"WEB PRESSMEN'S UNION NO. 20,
CINCINNATI, OHIO.
"Per W. A. McKay, Delegate.

"Referred to Committee on Resolutions.

"Fifth Day, Friday Morning Session.
"Report of Committee on Resolutions.

"PROPOSITION NO. 48.

"The committee recommended concurrence. The recommendation of the committee was adopted. 195

"Fifth Day, Friday Afternoon Session.
"Report of Committee on International Contracts.

"RESOLUTIONS.

"Whereas, The International Association of Machinists is affiliated with the American Federation of Labor, also with the building, metal, railroad and labor departments thereof and has so changed its

laws to bring about closer affiliation of workmen and women engaged in any great industry, to the end that joint action may be brought if necessary; and

"Whereas, Machinists, apprentices and helpers, numbering many thousands engaged in making, erecting, installing, dismantling or repairing of machinery of all descriptions used by printing trades, are organizing this industry for the establishment of the eight (8) hour day, with many employers now operating on the eight (8) hour day basis, and to further assist, if necessary, those with whom we come in contact in our daily labor in various print-

197 ing establishments, and

"Whereas, The general trend of labor organizations today is undoubtedly toward bringing about closer affiliation of kindred trades employed in a similar industry, so grievances may be more readily adjusted by those familiar with same, with joint action brought about when being oppressed by unscrupulous employers; therefore be it

"Resolved, That we, the International Association of Machinists, urge the delegates of the Printing Pressmen and Assistants' Union in convention assembled to endorse this resolution, to the end that we may bring about a condition whereby we may at all times act in unison for the protection of those we represent. Be it further

198 "Resolved, That we pledge our moral support to those now on strike for eight (8) hours against the Duplex Printing Press Company at Battle Creek, Michigan, to the end that we do intend, wherever possible to protect the fair employer, but will prevent if possible, the installation of presses by scab labor, and also use our influence to prevent the placing of orders for presses manufactured under unfair conditions; and further, that we continue to demand I. A. M. cards where machinery is being in

stalled or repaired, and that these resolutions be given as much publicity as possible among printing pressmen and printing trades.

"The committee recommends concurrence. President Berry—The International Printing Pressmen and Assistants' Union does not in the adoption of this communication intend to precipitate or participate in any manner whatsoever with the I. A. of M. to boycott or attempt to discriminate against any fair industry. We simply take this position for the purpose of protecting the rights and interests as established by law for the Printing Trades Unions of North America. I make this statement 200
for the records and for the advice of the convention. The chair entertains the proposition on the ground that it extends to that point, so that there may be no misunderstanding in the future in the event of the Duplex Company attempting to misconstrue the position of the I. P. P. and A. U.

"Delegate Mooney: It is giving our moral support to the International Association of Machinists all over the country.

"The recommendations of the committee was adopted."

CHARLES F. YOUNG, a witness called on behalf of 201
the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Merritt.

I am employed by the plaintiff to supervise the installation of newspaper machinery sold by it, and perform this work of supervision at the buildings of the newspapers which purchase the machines. I heard there was a strike in the factory of the complainant in 1913. When the strike was called

in plaintiff's factory in August of 1913, I was working in Boston, but did not go out on strike. In November, 1913, in New York City, I received a bill of lading for a Duplex press purchased by Nicoletti Brothers, of Lafayette Street, New York City. I started to take the bill of lading to the Britton Trucking Company, run by Charles Britton, in order to have him handle the machinery, and on the way on Gold Street, between the World Building and Britton's office, I met Mr. Burkle and Mr. Soeller, who had formerly been in the employ of the plaintiff. After talking with them I went to
203 the union headquarters with them and met defendant Deering, who there wanted to know whether I was going to stand with the union or with the Duplex Printing Press Company, and I told him I was going to stand with the company, because I did not think it was called upon to call a strike and I sided with the Duplex rather than with the union. At that time I was a member of the International Association of Machinists, holding a card. I was a member of that union about 1900 and ceased to pay dues somewhere about 1902, and was reinstated again, I think, by the New York Lodge in 1912, when I continued a member until March, 1914, when I ceased to pay dues, but have not been a member since. While at union headquarters,
204 Mr. Deering asked me if I did not think I should, on general principles, leave the Duplex Company and go on strike with the union. I told him that the Duplex Printing Press Company had been always fair with me in their dealings and they had paid me a satisfactory wage and I would consider that I had no principle if I should leave the company for the union; that I believed that Burkle and Soeller had also been used fairly by the company, and they both admitted then and

there in the presence of Deering that this was true, and that they had been paid as high a wage by that company as they had ever received from any other company. Mr. Deering told me I did not have to erect machinery or look after its installation if I did not wish, and I could send word to Mr. Stone that I was afraid to attempt to install the machinery here in New York City. I told him that would be untrue, and Mr. Deering stated that if I only knew it I had good reasons to be afraid to look after the Duplex Printing Press Company's work. Mr. Deering was referring in general to the installation of machinery for the Duplex Company. He 206
said that if I went on with the erection of the press for Nicoletti Brothers, he would take my card away from me and blacklist me as a scab all over the East. Mr. Deering then asked me what I was going to do and I told him that I was going to deliver the bill of lading to the Britton Trucking Company. When I started for Mr. Britton's office he accompanied me without any invitation, and when I handed the bill of lading to Mr. Britton and asked him to haul the machinery, Mr. Deering told him not to haul the machinery. Shortly after that I was called to Boston on other business and had nothing further to do with the erection of this press for Nicoletti Brothers.

I also recall that the company sold a press to 207
the Bollatino della Sera at 178 Park Row. I was given a bill of lading for it and arrived in town from Boston to take charge of the work in December, 1913. Deering told me not to erect the machinery, and after it had been unloaded and unboxed in the building of the Bollatino della Sera he came in and ordered the men working with me to quit work, which they did. These men were unboxing, cleaning and assisting in taking the ma-

208 *Charles F. Young—For Plaintiff—Direct.*

chinery into the basement of the building, and I understood that they belonged to the Machinists' Helpers' Union. He told them to quit work, which they did, and there was half a load of machinery left on the sidewalk, which was later loaded back on the dray and taken away.

Q. Did you see Mr. Deering again about at this time? A. A day or two later I again met Mr. Deering on the sidewalk and he stated they would do everything they could to prevent that machinery going into the Bollatino della Sera, and that he had notified the repair shops in that locality not to do any repairing on the machinery. He also
209 told me that he had heard of one or two breakdowns on Duplex machinery lately, and that there would be more the first of the year, as they were going to take aggressive action against the Duplex Company.

Q. Did he state anything about some people in the Bronx? A. He stated that there was a prospective purchaser for Duplex machines in the Bronx, but that he had put a stop to that deal, or words to that effect.

Mr. Sullivan: I move to strike that out; it is the witness' conclusion.

By the Court.

210

Q. State, as near as you can, what he said. A. I believe that he stated that he had been able to queer that game.

In April, 1913, I met Mr. Keppler, and on one occasion Mr. Deering was present, and I think Mr. Dowe. The conversation related to the installation of stereotype machinery in the Grand Central Palace, where an exposition was to be held in April, 1913, and Mr. Keppler told me not to go on with

that work until I had received other orders from him, as he was communicating with the factory at Battle Creek, Michigan, and he said he would let me know whether I would be allowed to install that machinery or not, and that if I continued to work with the Duplex Company against the rules of the union, he would see that I never received a union card again. At the time I was erecting the press for Nicoletti Brothers, Mr. Deering, laughingly, said that if I continued to work for the Duplex Company and throw down the union, that he would shoot me.

I recall that in February, 1914, a press was being installed for the *Italian Herald* at 145 East 28th Street. The Britton Trucking Company delivered the press and Deering came up there and told the truckman to quit work. Mr. Burkle and Mr. Soether were also present doing picket duty for the union outside of the 28th Street premises. When I was supervising the erection of the press for the *Italian Herald*, Mr. Deering came in the building to see me on two occasions. On the first occasion we had just about unloaded all the machinery, and when he asked me who was working with me, I told him Mr. Leo Maddock, and he went over to talk to Mr. Maddock. On February 26th he called again at about 5 o'clock and asked if Mr. Stone was in town. He asked me what I was doing and I told him I was superintending the installation of the press. He told me that I had better quit or he would take my card away from me. He remained a few minutes and went out just before 5 o'clock. The following day on my way home——

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213

Mr. Sullivan: I object to this unless it was in the presence of the defendants.

The Court: We will find out in a minute.

214 *Charles F. Young—For Plaintiff—Direct—Cross.*

A. Mr. Maddock and I quit work at 5 o'clock, and before we went a block away from the building I was struck from behind and knocked unconscious to the sidewalk and Mr. Maddock was badly bruised. I did not see who hit me, nor did I see Mr. Deering or any of these defendants on that day.

Mr. Sullivan: I move to strike it out.

The Court: Motion denied, in view of the fact that there was a threat made before that.

Mr. Sullivan: Exception.

215 *Cross-examination by Mr. Sullivan.*

In 1900 I was a member of the Local Machinists' Union in Battle Creek, Michigan, and worked in the factory of the Duplex Company ten hours a day, $2.75 a day, in the manufacture of these machines. I continued a member of the union for about two years, and then ceased to be a member. I continued to work for the Duplex Company from 1900 to date. In 1912, when I was working for the company in the installation of newspaper machinery, I applied for reinstatement in the Machinists' Union. I had been engaged in this installation work for five or six years off and on prior to 1912. On occasions I have operated the machinery that
216 I was installing, but never received any complaints from the members of the Pressmen's Union against such operation.

Q. Do you know a man named Edwards, a president of the Pressmen's Union in New York? A. Yes.

Q. Do you remember Edwards speaking to you and Maddock at the time this press was being installed? A. I remember him coming in and talking to Maddock.

Q. Did you remember him making a complaint against the operation of this press by a man from the Dupleix plant instead of by the Pressmen's Union? A. I do not remember.

Q. Do you remember an argument arising and a discussion arising between the Pressmen's Union, the *Italian Herald* and yourself and Maddock on that occasion as to the operation of this press after its installation? A. No; I do not.

Q. Will you state that there was no discussion or argument? A. Not with me.

Q. Maddock, the representative of the *Italian Herald*, and the representative of the Pressmen's 218
Union over the operation of this press after its installation? A. Not to my knowledge.

Q. Do you remember any such conference, we will call it then, that existed between these three parties? A. Not to my knowledge.

Q. Your memory is clear as to other things that occurred there on the 26th of February; can you not remember that? A. I had nothing to do with any conference.

Q. Who would operate these presses? Maddock? A. The machine would not be operated by the Dupleix Printing Press Company; they might instruct a man to operate it.

Q. After you and Maddock and the other men set up the presses after installing it under direc- 219
tion of the Dupleix Company and prior to its being taken over by the purchaser? A. Not actually operating.

Q. Is it not a fact that after these presses are installed that the Dupleix Company operates the press for a given time before the purchaser accepts them and takes possession of them? A. They instruct a man to operate them, but they do not actually operate them.

220 *Charles F. Young—For Plaintiff—Cross.*

Q. You mean to state there as a matter of fact—now, understand me—you mean to state, as a matter of fact, that the Duplex Company simply obtain help in the locality where the press is installed, and that it is operated under your supervision; is that right? A. That is right.

Q. Who supervised the operation, you or Maddock, which went on? A. Both when we are on the job.

Q. Now, these presses that had been installed in New York previous to this one of the *Italian Herald*. After the installation of the press both
221 you and Maddock supervise the operation of these printing presses, did you not? A. We instruct the pressman on the operation of them.

Q. Is it not a fact that there was a dispute arose between the pressmen's organization and both you and Maddock on this previous occasion as to you men staying there as pressmen in charge of these presses being operated? A. Not to my knowledge.

Q. You cannot remember that at all; is that right? A. I remember no dispute with the Pressmen's Union regarding these.

Q. over the operation of the presses after the installation? A. You are referring to the 26th Street job?

Q. I am referring to the other presses installed
222 in New York City. A. I had no personal dispute with the Pressmen's Union.

Q. Did Maddock? A. Not to my knowledge. The machine would not be operated by the Duplex Printing Press Company; they might instruct a man to operate it; and after I and Maddock and the other men set up a press we had not on previous occasions actually operated the press prior to its being taken over by the purchaser. The Duplex Company instructs a man to operate them but they

the test actually operate them. The Duplex Company might obtain help in the locality where he press was installed and it is operated under its supervision. Both Maddock and I supervised the operation when on a job. We instructed the pressmen on the operation of them, but I remember no dispute with the Pressmen's Union regarding this either on the 28th Street job or in connection with other presses installed in New York City, and to my knowledge Maddock had no such dispute. In April, 1913, at which time I held a card and claim of membership in the International Association, I was in New York City for the purpose of supervising 224
the erection of machinery for the show to be held at the Grand Central Palace, and the conversation which I then had with Mr. Keppler was in the Victoria Hotel. On accepting a union card I assumed certain duties and obligations as a member. The last time I was in the plaintiff's factory prior to August, 1913, was in September, 1911. I knew in September, 1913, that there was a strike in the plaintiff's factory but did not know the causes until October or November. I understood the strike was called because the company laid off some men and the union thought that in so doing they had discriminated against the union. I was also informed that they were seeking the eight-hour day at the Duplex Company and were trying to come to an 225
understanding with the Duplex Company. In August and September, 1913, I worked eight hours and received $7 a day, which is higher than the union rate of wage. I understood that my obligation as a member of the union was to obey the instructions of the officers of the District Lodge with respect to working and refraining from work where a strike existed and as a member of the local union I continued to work against the directions of the

226 *Charles F. Young—For Plaintiff—Cross.*

local officers after the strike was called. At the time of my conversation with Mr. Keppler in April, 1913, there was no labor trouble or dispute between the Machinists' Union and the Duplex Company that I know of, and as a matter of fact I did install the machinery for the Grand Central Palace during that year, under the supervision and with the consent and direction of Mr. Keppler. The Nicoletti Press was installed in November, 1913, at which time I met Mr. Deering.

Q. And at that time you had your union card and claimed membership in the International Association of Machinists? A. Yes.

227 Q. You say that you met Mr. Deering prior to the installation of that press? A. Yes.

XQ. You knew that he was an officer of District Council No. 15, namely, the business agent, did you not? A. Yes.

XQ. And that was the District Council of which you were a member? A. Yes.

XQ. He informed you that there was a strike called by the Association against the Duplex Company, did he not? A. Yes.

XQ. And that as a member you were not to work upon the machinery of the Duplex Company? A. Yes.

XQ. That was the information that he conveyed
228 to you at the office, was it not? A. That was the substance of the information.

I did not install the press for Nicoletti Brothers, because I left town to do work for the plaintiff elsewhere, but I did take the bill of lading and I went to the union headquarters with Mr. Soeller and Mr. Burkle, both of whom I believe were members of District No. 15. The conversation was friendly. We were joking and there was no aggressive spirit shown by Mr. Deering.

XQ. And when you referred to the fact—Mr. Merritt referred to the fact that he would shoot you, that was said laughingly and in a joke, was it not? A. Yes. Mr. Deering then suggested that I quit work and send a telegram giving as my excuse that I was afraid, but I did not send the telegram. Mr. Deering went with me to the Charles Britton Trucking Co., but I did not ask him to go and I did not offer any objection when he stated he was going. We continued our conversation on the way to the Britton place and our talking continued friendly, and when we reached the office of the trucking company I handed the B L to Charles Britton personally asking him to haul the machinery. 230 Mr. Deering said to him, "Britton, do not haul the machinery." That was in the form of a request. Britton was not a member of the union. There was no dispute and we were all still friendly, and parted friendly. That is all I know about the Nicoletti press personally.

I was connected with the press for the Bollatino della Sera in December, 1913, and saw Deering on the 26th of December after the press came into New York. I went to union headquarters when I reached town and that is the first time I saw Deering in December, 1913. I then had a talk with Deering relative to this particular press, and he called my attention to the fact that I was a member of the 231 union and held a card.

XQ. Did he then direct you as business agent of District Council No. 15 not to work upon the machinery of the Duplex Printing Press Company? A. Yes.

XQ. Did he tell you again at that time that the strike was still on at the Duplex Printing Press Company? A. Yes.

XQ. And did he tell you that unless you obeyed

232 *Charles F. Young—For Plaintiff—Cross.*

his order and ceased to work that your working card would be taken away? A. He did. That is all the conversation that occurred relating to the matter of installing machinery for the Duplex Company. I requested him to let the union men install that machine for the Bollatino Press because it did not come from the Duplex Company directly.

XQ. But he advised you, did he not, that there was a strike against the Duplex Printing Press Company and the members of the International Association of Machinists would not work upon their production? A. Yes.

233 XQ. And he told you not to work upon it as a member of the International Association of Machinists? A. Yes.

XQ. He further told you that if you did he would see that your card was taken away in the union? A. Yes.

XQ. That was the threat that he made at that time—to take your card away from you? A. Yes.

XQ. As provided in the union rules? A. Yes.

That was all the conversation relating to this matter, but I started to install the press and the men working under my supervision at the Bollatino Press were members of the Helpers' Union, which I understood was a voluntary association affiliated with the International Association of Machinists

234 and subject to its by-laws and constitution, and held union cards showing this. This was the class of men working under my supervision on the production of the Duplex Printing Company.

XQ. And what he did at that time was to stop the members, holding cards, from working on this production? A. Yes.

XQ. And refused to permit them to work further on that? A. Yes.

That is our full complaint for interference with

the installation of the Bollatino Press and it was at that time that part of the machinery was left out on the street. I understood that the Britton Trucking Company acted as truckmen and that they hauled away the machinery that was left on the street. It was not the men who quit work who loaded the machinery left on the street back on to the dray. All of the men except Maddock and myself stopped work at Deering's direction and we were the only men holding cards of the International Association of Machinists who refused to stop upon being told of the strike at the Duplex Company and that this machinery was the product of that company. Maddock was a pressman who 236
held a withdrawal card, and I am a machinist, but Maddock installs machines as well and also operates them. Where there are several presses in a room there is usually a foreman and it is usually the custom to have a pressman in charge of each press when in operation. There are other men who are known as the "crew." Maddock did not stay and operate the presses after their installation until they were accepted. I do not know that he ever did or that any representative of the Duplex Company operated them as pressmen in charge. They were operated by the pressmen in charge from the International Pressmen's Union unless it was a non-union office. To my knowledge Maddock never 237
stayed in New York and operated a press and I never left him in plants where the presses had been installed. When I was assaulted I did not see any members of the International Association of Machinists nor did I see any as I came out of the doors. I know very few members of District 15. The street was not very crowded. I did not see Deering or any other officer that I recognized.

238 *Charles F. Young—For Pfl—Redirect—Recross.*

Redirect examination by Mr. Merritt.

For the purpose of instructing a pressman I would remain four or five days to two or three weeks, and the pressman who was to be instructed usually comes to the job when we start to erect the machinery, so that the instruction continues during erection. When Deering told me that I had reason to be afraid, he did not say it jokingly.

When I asked Mr. Deering to allow the men to work on the Bollatino Press on the ground that it was second-hand and had not come directly from the Duplex Company, he said he could not allow it
239 at that time without receiving permission from the international headquarters of the Machinists' Union. Mr. Keppler told me not to go ahead with the installation of the press at the Exposition in 1913 until I received directions from him, and Mr. Deering told me not to do the work unless I was permitted by the Machinists' Union. They stated that they were having some communication with the Duplex factory in Battle Creek and that they did not wish us to go to work on that machinery until they had received further word from the Duplex Company. That was before the strike took place.

Recross-examination by Mr. Sullivan.

240

There was no pressmen that were instructed, that were watching the erection of the machine of the *Italian Herald* in February, 1914, and that is the occasion I refer to that the president of the Pressmen's Union came to the pressroom. Mr. Edwards, the president of the Pressmen's Union, came in and had a talk with Maddock of the *Italian Herald* while we were installing the press in February, 1914.

Q. You say that Mr. Deering stated that you had

cause to be afraid. Is that the term he used? A. I think that is the term he used.

Q. You knew that you were subject to have your card taken away, did you not? A. Yes.

Q. Was that a serious matter to you? A. I never considered it such.

Q. It is quite a serious matter with most union men to lose their card, is it not? A. With the majority of them.

Q. And following up that statement of Mr. Deering with respect to the fact that you had cause to be afraid, did he subsequently tell you that unless you stopped working he would take your union card away? A. Yes. 242

Re-redirect examination by Mr. Merritt.

It is a serious matter for a union man to lose his card because it is impossible for him to get another job; to get a job in a union shop if he has no card. As I understand the rules of the International Union, you are to quit work immediately upon receiving notice to do so from a superior. This applies under all circumstances.

Re-recross examination by Mr. Sullivan.

I believe I took an obligation and signed the by-laws when I entered the union, but I did not take any when I was reinstated in the New York union. I believe I could not become a member without doing so. 243

244 *George W. Burkle—For Plaintiff—Direct.*

GEORGE W. BURKLE, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Merritt.

I went to work for the plaintiff in September, 1912, went out on strike the following September, 1913, remained on strike until November, 1914, when I returned to work for the plaintiff and have ever since been working for it. When the strike was called I had charge of the erection of a press in Mason City, Iowa, and receiving a telegram
245 from my local lodge to quit work, I thereupon quit and so notified the home office. The work of erection on the press in Mason City, which was for the *Mason City Times*, a daily newspaper, had been going on about three days. At the time the press was being erected for Nicoletti Brothers on Lafayette Street I was out on strike and in New York City, and received orders from defendant Deering to be at the place of erection early Monday morning to find out who was going to erect the job and try and stop them. Henry Soeller, a former employee of the Duplex Company, received similar instructions from Mr. Deering, and I went over to the Nicoletti Brothers' place to get hold of the erector Smith and try to get him to quit, but he
246 would not do it. I stayed around there for three or four days and saw the press delivered by the drayman. I reported to Deering who the erector was and my success in making him quit. During the years 1913 to 1914 I heard Deering make statements about the installation of the Duplex presses, and one of the times was when Deering spoke to Mr. Young when the press was being hauled to Nicoletti Brothers, and another time was at the regular meeting of the local lodge.

Q. What did you hear him say at any meeting of the local lodge—that is, Mr. Deering? A. In regard to the presses coming into New York City, and being stopped.

Q. What time was it that you heard him make any statements at the meetings of the local lodge concerning the Duplex Company? A. November, 1913.

Q. What did he say? A. Regarding the Nicoletti press—that it was delivered and that he got the man delivering it and the press was stopped—the delivery was stopped.

Q. That is what he said at a meeting of the lodge at one of the regular meetings? Did you hear him 248 make any reference to any of the other jobs? A. He also made that same reference to the *Italian Herald* on East 28th Street.

Q. Where did he make the reference to the press of the *Italian Herald?* A. Both at the local lodge and at the District No. 15 Headquarters.

Q. At the same time or a different time? A. At different times along about January, 1914. At the end of 1913 and the beginning of 1914 I also heard him make some general statements as to the attitude toward the installation of the Duplex presses.

Q. What did he say? A. That they had quite a few presses tied up throughout the country, had two or three of them in New York that would not 249 be erected. Soeller and I were together when we were instructed by Deering to go to the Lafayette Street job, but I went up Monday morning an hour or two before he did, and later we were together up there most of the time, and I had conversations with him about watching the job. I heard Soeller receive the same instructions from Mr. Deering that I got, and we saw Deering at headquarters before we left.

250 *George W. Buckle—For Plaintiff—Direct.*

Q. State what Soeller said to you.

Mr. Sullivan: I object to that—there is no connection between Soeller and these defendants.

Objection overruled.

Mr. Sullivan: Exception.

By Mr. Merritt.

Mr. Soeller and I discussed the best way of doing the picketing and he told me that—about the third week in November on Lafayette Street—that the next day I was supposed to stay away from the
251 pressroom just as far as possible; that something was going to happen, and that if they got hold of me, I could prove an alibi. I stayed away.

At headquarters of District No. 15 on Nassau Street I also received instructions from Mr. Deering concerning the installation of the press for the *Italian Herald*, at 28th Street; that the press was on the B. & O. docks on the west side between 24th and 25th Streets, and I was to go over there and find out what car it was in and to gather information as to the time of delivery. Soeller was not present, but I followed Mr. Deering's instructions two or three times and reported back to him. Another time he ordered me to go there and I refused, and
252 on one occasion he told me to go to 28th Street and watch the job, which I did, with Soeller. The press was being hauled by the Britton Trucking Company, and the hauling was stopped right before dinner, the Britton Trucking Company being told not to handle any more of it. If I remember right, the trucking people quit. I believe that was the first load and there were probably two or three carloads. There were four men standing around the corner preparing to take up this job, whom I

did not know, and they started to take care of the machinery when we left. Mr. Deering was with us.

Cross-examination by Mr. Sullivan.

I joined the union in September, 1903, at which time I took an obligation and received a copy of the by-laws, which I did not sign, and I continued a member until March, 1915. One of the obligations was not to divulge what took place in the meeting room to anyone except a member, while I was a member. I went to work for the plaintiff in September, 1912, as an erector and worked there about six days, where they worked ten hours a day. I 254
never worked consecutively in the manufacture of presses, but sometimes came back for a day or two in connection with the dismantling of presses. As an erector, I worked sometimes eight hours and sometimes ten, and on the road work, eight hours, receiving $5.50 a day. I started to work for R. Hoe & Company in 1898, and went out on strike there in 1911, which resulted in the men getting eight hours. They also had a strike in 1898, and another one in 1901, and another one in 1909. When I received a telegram from Local Lodge No. 434 that there was a strike on at the Duplex plant and to quit work, I did quit work in accordance with my obligations as a member of the union, and came to New York, where I acted as a picket during the strike. Soeller 255
and I were pickets at the Nicoletti job. I was instructed to induce the men working there to cease work, and attempted to persuade them, by argument, to cease work, and I was not told to assault anyone. When I spoke of the work being stopped on the machines, I meant that the men who were employed on them had withdrawn their services. To my knowledge nothing happened after the time Soeller told me to keep away from the Lafayette

256 *George W. Buckle—For Plaintiff—Cross.*

Street job, and I do not know where Sadler got his idea from. I spoke to Mr. Young about this, when he told me he was assaulted in East 28th Street, and I told him I was not a bit surprised. I spoke to Mr. Merritt about it this morning for the first time, but I did not tell Mr. Stone, the president of the company.

XQ. You stated that Mr. Deering, at meetings of the union, made statements as to work being stopped throughout the country? A. Yes.

XQ. By that, did you mean that the men who were working on it had withdrawn their services?
257 A. Those were the impressions that I gained from the argument.

XQ. Every time that you have used the word "stopped," within your personal knowledge as to what happened in New York, it consisted to induce the men working to cease their employment? A. That is my impression.

XQ. What you saw here in New York, that is your impression, that is what you attempted to convey to this Court by the word "stopped," that the men withdrew their services? A. Yes.

Q. You speak of men working on the job at 28th Street; Mr. Deering going there and speaking to the drayman? A. Yes.

Q. Can you tell us what he said to the drayman;
258 what happened there? A. That the men were to quit work on that machinery; that they were to knock off.

Q. You have stated here in your direct examination that that work stopped because the draymen refused to haul it? A. Yes.

Q. Did you hear the last witness testify? A. I listened to his testimony.

Q. Did you hear him testify that the reason that that work stopped was because the union men who

were working on it had been withdrawn? A. That is the same thing.

Q. Well, you said that these union men that were withdrawn, their services withdrawn, were working for the draymen? A. That is the idea.

Q. And these men whose services were withdrawn were members of the Machinists' Union, were they not? The Machinists' Helpers' Union. They belonged to the International Association of Machinists? A. Yes.

Q. So that the International Association of Machinists simply withdrew these men at that time, and the work stopped. A. That is it. When I 260
went over to the B. & O. docks to find the *Italian Herald* press, I did not see it. When I came to New York I first picketed the Lafayette Street job and attempted to induce the erector, Smith, by argument, to quit work, which he refused to do, and the press was erected. Under Mr. Deering's instructions I attempted to persuade people to stop, and if they did, well and good, and if they did not, I could not help it. I never saw any man assaulted or heard Mr. Deering issue any orders to have any man assaulted, or at least no man in particular. I have heard remarks that sometimes the sidewalk would jump up in the air and hit a fellow in the face, but I never heard him order an assault. 261

LESLIE R. FORT, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Merritt.

I was formerly secretary and treasurer of the Plainfield Press Company of Plainfield, New Jersey, which concern purchased a press for its daily

262 *Leslie R. Fort—For Plaintiff—Direct—Cross.*

newspaper from the Duplex Printing Press Company in 1912. In 1912 I had a conversation with Hugh Reilly, business agent of the Machinists' Union, with headquarters in Newark, which had the Plainfield machine shops under his control.

Mr. Reilly came to my office in January when the press had started to run, or was about to be started, and we had a very pleasant conversation about the press. He asked me if I knew that the Duplex was not a union shop, which I did not. He asked me if the press had arrived, and I told him it was in the basement nearly completed. He asked me if
263 the man doing the work had a union card, and I told him he had stated that he had. He asked if he could go down and see the man, and I said certainly. I went down to the basement with him and he asked the man to produce the card, and it developed that it was a pressman's card, although I did not see it myself. Mr. Reilly told me he had no business working that press and he had better quit, so he stopped and telephoned to New York, and Sadler was sent to complete the job. The press was finished and was run, I think, about January 20th, 1912. In December, 1915, I wrote the letter, Exhibit No. 2, to the Duplex Printing Press Company.

264 *Cross-examination by Mr. Sullivan.*

Q. When you went to their pressroom with Mr. Reilly you discovered that Mr. Dorsett had a card belonging to the Pressmen's Union? A. Yes.

Q. Mr. Riley was business agent of the Machinists' Union? A. Yes.

Q. Did he complain to Mr. Dorsett that it should be a member of the Machinists' Union and not a member of the Pressmen's Union to erect the press? A. Yes.

265

Q. That was the form of his complaint? A. Yes.

Q. An infringement upon the trade line of this organization? A. Yes, I fully understood that and took his word for it.

Q. And that Mr. Riley came there to inform you that the presses manufactured were not manufactured by union men? A. Yes.

Q. That is as far as he went? A. Yes.

I wrote letter, Exhibit 2, when we bought a new press, and that was the reason we did not buy it from Duplex. But neither Riley nor any other member of the union was present when I wrote the letter.

266

Redirect examination by Mr. Merritt.

Riley thought that the press had not been bought and did not realize it was in the building at the time. I could not repeat his conversation exactly but he intimated that he might make trouble with the union pressmen in Plainfield by having that press in the shop.

Recross-examination by Mr. Sullivan.

I do not think Sadler knew anything about the press and he stood around while the other fellow finished the job, and instructed the man to finish. We ran the press without trouble.

267

CHARLES BRITTON, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Merritt.

For eighteen to twenty years I have been engaged in the trucking and rigging business under the name

of Charles Britton Trucking Company. I have been employed from time to time to haul presses made by the Duplex Printing Press Company in New York City, and am generally employed to do this by the customers of the Duplex Printing Press Company. I am also employed by different shops around town. The Duplex Company brought the bill of lading for the Nicoletti press on Lafayette Street down to my office and I undertook to haul it. Mr. Deering told me not to haul the press.

By the Court.

269 Q. He told you not to truck the press? A. Yes.

Q. He told you— A. It would make trouble for me, that is all.

By Mr. Merritt.

I did not haul the press after that, because he would pull the men off the job.

By the Court.

Q. What do you mean by that? A. Not to carry on the work—knock them off. I do not mean he physically took hold of them, but he asked them to quit work, and they did not work.

270 *By Mr. Merritt.*

I undertook to haul the Duplex Company's press to the *New York Law Journal*, at 19 Murray Street, about April 14th and met Deering there, who came and stopped the job by calling my men off the job. He told them to quit because it was not a union job and they were union men who belonged to the Machinists' Helpers' Union, which he controlled. When I say he took the men off the job, I am referring to my own employees, the men whom I was

paying. By this time I actually had one or more loads at the building, but had to cart them back to the stable, but I brought them back instead and put them in. Mr. Deering came down there and told me it was not a union job and he knocked off my employees, and that is all I recall.

Q. Did he ever make any statement at that time concerning the Duplex Printing Press Company? A. He told me not to cart any Duplex presses, and if I did there would be trouble.

Q. Did you also haul and deliver a press to the *Italian Herald* on East 28th Street? A. Yes.

Q. Did you have any conversation with Mr. Deering on that job? A. No, sir, not on that job. He went and knocked the men off. I had to get an outside truck to finish the job. I had to get a gang of non-union men to finish the job. 272

Cross-examination by Mr. Sullivan.

I employ union men to handle the machinery in New York City.

Q. You could have employed non-union men also, if you wanted to? A. Yes.

Q. And when you were handling union products the union men always worked with you? A. Yes.

Q. And continued to work with you? A. Until they were knocked off by Mr. Deering.

Q. You have had no trouble handling a Hoe machine? A. I never done a Hoe machine. Hoe did his own hauling. I did two or three moving jobs for him. 273

Q. You never had any trouble then? A. No.

Q. You were informed by Deering that union men could not handle the non-union product of the Duplex Company, were you not? A. He did not say that to me, no.

Q. What did he say to you, that the job was non-

union? A. That the job was non-union, not to haul it.

Q. Or, if you did so he would withdraw the union men? A. He took the men off the job.

Q. And what he would say was he would withdraw the union men? A. He owns the Machinists' Helpers' Union.

Q. Withdraw the union men from your work? A. He organized it and he is running it.

Q. He would withdraw the union men, is that a fact? A. Yes, he knocked them off on two or three jobs.

275 Q. Now, on some of these jobs you say you simply went ahead and got non-union men and conducted the work, is that a fact? A. I had to get somebody else to finish the job.

Q. The non-union men were employed by somebody and they finished the work? A. Yes.

Q. And you could have employed non-union men there? A. No.

Q. What would stop you from hiring non-union men? A. Because they would be—I had four men put on that 28th Street job, but they were going to bend a piece of pipe around their necks.

Q. Were you there? A. I was there twice.

Q. Has there been any time or has anything been done by Mr. Deering at any time, except to with-
276 draw the men from the work, the men simply quit at his request? A. Yes.

Q. That is all that was done? A. Yes.

Redirect examination by Mr. Merritt.

Q. Why could you not employ non-union men? A. We did not want to have a lot of trouble and violence.

Mr. Sullivan: I move to strike that out as not responsive.

Motion granted.

Mr. Merritt: Exception.

Witness: If you want violence, yes, you can.

Mr. Sullivan: I move to strike that out as not responsive.

The Court: Strike it out.

Q. Why can you not employ non-union men? A. You can employ them, provided you want to have a lot of trouble.

Mr. Sullivan: I move to strike "provided 278
you want to have a lot of trouble" out.

Mr. Merritt: I think his answer is substantially all right.

The Court: Let it stand.

There are hundreds of truckmen who employ non-union men. Some truckmen are connected with the building trades, but the Machinists' Helpers' Union is not.

PERCY E. DOWE, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Merritt. 279

I live at 1597 Boston Road, and am a practising dentist. From 1898 to 1901, and again for a period of three or four years prior to May, 1914, I was a sales manager for the Duplex Printing Press Company. I visited the Charles Britton Trucking Company in November, 1913, relative to hauling the Nicoletti press to ascertain why he would refuse to do the work and saw either Mr. Britton or Mr. Joy, his partner.

Q. What did he say?

Mr. Sullivan: I object to that.
Objection sustained.

Later on I went to the job and arranged with Dowe to complete the work, upon condition that Smith be detailed to install the machine. I went up to the job and found no one there supervising the installation, and I stayed there watching the unboxing and unloading of the machines into the basement. Mr. Deering was there and insisted upon entering the office of Nicoletti Brothers, but was re-
281 fused admission. He stated there would be trouble on every job that the Duplex Printing Company had in this city, and he said this in the presence of Richard Nielson, agent for the Riggers' Union, and Mr. Soeller and other men who were on the job. I heard Mr. Deering speak to Mr. Nielson, and they said there were solicitations to call the men off the job of handling the machine.

Cross-examination by Mr. Sullivan.

Q. You say he tried to induce Nielson to call the men off from handling the machine? A. Yes.

Q. That was by argument and persuasion? A. Yes.

282 Q. He was not successful? A. No.

Q. He made a remark that there would be trouble caused for the Duplex Company? A. Yes.

Q. Did he say whether the trouble would be the trouble that would result from his taking legal or proper action that he was entitled to take? A. No specific detail.

Q. Did he say the trouble would arise because the union would withdraw the services of its members wherever this machinery manufactured by non-

union men would appear? A. There was no discussion or analysis of the question.

Q. The word trouble was simply used, take it as you can? A. Yes.

I understood that a pressman must hold a pressman's card and a machinist hold a machinist's card, but there is no reason why the same man cannot do both kinds of work. The Duplex Printing Press Company was not using a man for both kinds of work, but used him in this case as a machinist.

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ISAAC C. SQUIER, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Merritt.

I am a salesman for the Duplex Printing Press Company, and from 1913 to 1915 was a salesman, also managing the office force in New York City to some extent. There were two presses sold to the *Italian Herald*—one in December, 1913, and another in February, 1914, and they were both finally erected. I went up to the place of the *Italian Herald* in December, 1913, and looked after the erection of the first one, which was erected late Saturday afternoon, and Saturday night and part of 285
Sunday morning, when it was completed. Two or three days before that I had visited the place after the work had been going on, but when I got there the work had ceased. I saw Mr. Deering there and he stated that our men would be taken off the work and the different members of the building trades unions that were at work at the building would be called off on strike. This was on a Wednesday or Thursday prior to the Saturday to which I have

286 *Isaac C. Squier For Plaintiff Direct.*

referred; and the work was suspended two or three days until Saturday afternoon until about 5:30.

Q. Will you state now why the work was suspended until that time on Saturday?

Mr. Sullivan: I object to that as calling for a conclusion.

Objection overruled. Exception.

A. Because Mr. Deering had influenced the superintendent of the men who had been working at the building. At that time the building was not finished. Mr. Deering stated that he had told the
287 superintendent that until our men were taken off the work, he would arrange to have all the members of the different trade unions working on the building to go out on strike. The owner of the building told me that he was unwilling to have the work go on, because he feared that the different trades would withdraw their services. The work was commenced at 5 o'clock at night, continued until between 9 and 10 the following morning, with the exception of fifteen minutes at midnight for lunch. The following week I saw Mr. Deering at the entrance to the World Building.

Q. What did he say? A. He said, "You put one over on me this time, but you will never do it again, and I am going to make it more and more difficult
288 for the Duplex Printing Press Company to make installations and will interfere with their work in every way possible." He said, "I am very sorry for the salesmen. It is going to be more difficult for the salesmen to get orders for Duplex presses. I know of a prospect now where a publisher is considering the purchase of a Duplex machine and I am going to try and influence him to place his order elsewhere."

He also made similar statements to me at the time

the press was being installed for the *New York Law Journal*.

Q. What did he say? A. He said that he was going to do all possible to prevent the wheels of the *Law Journal* press revolving. If he could help it, the press would never be started in New York. He said the union had unlimited financial means, with which they could fight the Duplex Printing Press Company, and which they were to use for such purpose, and that eventually the Duplex Printing Press Company would have to give in to the union as other manufacturers had given in to the union; that the Machinists' Union would probably circularize among all the union members of the different 290
trades that were employed by newspaper publishers, thereby influencing these unions to discriminate against the Duplex Printing Press Company's machinery. Up at 28th Street during the interview with him in the *Italian Herald's* office, he predicted that there would be numerous breakdowns of the Duplex Company machinery, because we were on the unfair list.

Cross-examination by Mr. Sullivan.

He might not have used the word "discriminate," but that is the conclusion I drew. In December, 1913, the press for the *Italian Herald* was being in-
stalled and I took charge of it on a Saturday. War- 291
ner was our erector. I do not know whether the laborers were members of the union. The building was in the course of construction.

Q. Was it not a fact that the owner of the building told you that the men engaged in the other trades would not work on the building where non-union men worked and they could not work until these men had stopped working that Saturday noon? A. That Saturday noon.

292 *Isaac C. Squier—For Plaintiff—Cross.*

Q. What did he state with respect to working? A. He stated that we could not continue with the erection of the press until after the union men at work had finished work on the building, had completed the work on the building and left entirely.

Q. You say he told you non-union men could not come to the building until the union men had completed work and left? A. Yes, that would be two or three weeks after that.

Q. You did go in there on Saturday? A. Yes.

Q. The union men had ceased working at 12 o'clock, had they not? A. Yes.

293 Q. Why would he not permit these men to work while non-union men were working? He did not tell you whether they were union or non-union men, did he? A. Our man was a non-union man, that was the reason. We went in there at 5 o'clock on Saturday, after the other men had quit, and there were no union men working on the job and in all instances we were successful with our presses.

Q. The superintendent told you that your non-union men or man could not work in the building until the union men working on the building had completed their work; that is a fact, is it not? A. That is a fact.

Q. And that is what the superintendent told you? A. Yes.

294 Q. And that is all he told you? A. Yes.

It was the following week that I met Mr. Deering casually, and our conversation was very friendly when he said, "You put one over on me," and I felt we had done a pretty good job. He stated he would make it a little harder the next time. The trouble caused in these various instances in New York was the withdrawal of the members of the machinists' union from the work. When Mr. Deering stated he would make it harder, he said he

would keep a little closer watch and was going to watch our concern closely to see that his men did not handle our product. That is what I understood he would probably do. All machines have their breakdowns because no piece of machinery is infallible, and the men who operate the machines are the pressmen who are a distinct organization from the machinists. We do not have any more breakdowns than are naturally anticipated in the course of operation.

Redirect examination by Mr. Merritt.

I understood Mr. Deering to say or mean that 296
he was watching his men to see that they did not handle the Duplex presses.

It was on December 13th or 14th, 1913, that I had a conversation with Max Raymond, the owner of the building where the press for the *Italian Herald* was being installed.

Q. Will you repeat the conversation with the superintendent of construction of that building? A. He stated that if we continued with the erection of the press that he feared all the different members of the trades unions working on the building would cease work and the completion of the building would be held up for two or three weeks.

Mr. Sullivan: I move to strike that out. 297
There was no connection between these defendants.

Motion denied; exception.

Mr. Sullivan: I object to the reception of the evidence of what the superintendent said not in the presence of these defendants.

Objection overruled; exception.

He stated that Mr. Deering had threatened to interfere to the extent of having the members of

298 *Isaac C. Squier—For Plaintiff—Redirect—Recross*

the different trades unions, who were working on the building, cease work, which would thereby, temporarily at least, stop the completion of the work on the building.

On Wednesday and Thursday when the work first started, we had only one man in our employ and there were laborers there employed by the *Italian Herald* acting under the direction of our erector. All these men—our erector, Harold Warner—quit work on that Thursday, except one laborer who was kept on the job as watchman. I do not know whether these men were union men.

299 *Recross-examination by Mr. Sullivan.*

When I had the talk with the superintendent, Mr. Doering was within six or seven feet distant, but the conversation was solely between us.

Q. Doering took no part in it? A. No, sir.

Q. And was not active in any way? A. Not at that time.

Mr. Sullivan: I move to strike out any statements made by some certain person not in the presence of these defendants or any of them.

Motion denied; exception.

300 I do not know, except what the superintendent told me, as to whether Mr. Doering told him that or not, but the superintendent said that Doering threatened him, and others said so, too. The superintendent stated that Mr. Doering threatened to interfere with the members of the building trades at work on the building to the extent that they would quit work and thereby delay the completion of the building. That is the words he used. He did not state how Doering was going to accomplish that,

Isaac C. Squier—For Plaintiff—Recross—Re-redirect—Re-recross.
John J. Cosgrove—For Plaintiff—Direct.

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and I knew that these other men were not members of the machinists' union and that he would have to persuade somebody. He would have to go to some officers of the union that were over these other men and persuade them, and he in turn would have to persuade the men, and it would be by argument and request. Harley Warner was a non-union man as far as I am informed, and the factory at Battle Creek was not working under union conditions and the strike existed at that time.

Re-redirect examination by Mr. Merritt.

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I knew that the union members were obliged to obey the orders of their officers in connection with the matter of bestowing or withdrawing their labor.

Re-recross-examination by Mr. Sullivan.

I know that because I have been a member of two unions myself. The men do not always vote on a strike. The officers are supposed to be governed by a constitution, but they do not always govern themselves that way.

JOHN J. COSGROVE, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

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Direct examination by Mr. Merritt.

I am general business manager of the *New York Law Journal*, which in October, 1913, signed a contract to purchase a press from the Duplex Printing Press Company. Shortly thereafter, at the entrance of my building, in the latter part of October, 1913, on a Saturday afternoon, Mr. Deering came

there and started to go upstairs when I told him that the place was closed. He said, "You are going to put in a press next week?" I said, "No." He said, "Well, you have ordered a press," and I said, "Yes." He said, "Well, I will tell you there is a strike on at Battle Creek and you will not be able to have that press hauled to your place." I said, "No, I did not know that." He said, "Yes, there is a strike out there and the truckmen and helpers on these machine-moving trucks are all now in the Machinists' Union and they will not haul any machines." I said, "What has that got to do with us?" He said, "I will tell you you cannot haul it
305 because you cannot haul out the machinery and it is no good to you on account of this strike at Battle Creek." I said, "What do you want me to do?" And he said, "I will tell you. Go over and see Mr. Stone, in the World Building. Mr. Stone, I think, is President of the Duplex Company." And he said, "You better go over and see Mr. Stone and tell him that I was here and you can state to him the conversation we had here. Maybe your statement to him or your presence over there or your visit, will probably have some bearing on the strike that is now on at Battle Creek." I went over to see Mr. Stone and Mr. Dowe and they said there was no strike there; not to worry; not to fear; the press
306 would be delivered into the place. That was the end of the visit on Saturday.

The press was delivered early in the following January, 1915, and I made a place for the crates and boxes to be delivered and several had been brought in when Deering came on the job and said, "Here, I told you fellows not to do this. You know you should not do it" (something to that effect). I said, "Well, if Britton is going to do this you had better get Britton on the job here. Britton is your boss." I telephoned to Britton, who came

there and they talked and discussed the matter. I called up the Duplex Company and Mr. Squire said, "Tell them that you wash your hands of the whole matter." I said, "Deering, this is all off as far as I am concerned; you can do as you please; you can go as far as you like." In the afternoon Deering came upstairs and said he would let the first load go down. I said, "All right, Deering, you can do as you please about it." It was then so late in the afternoon that they could not get the first load unloaded before dark and they took the larger pieces back to the stable for fear that it would be injured if they tried to deliver in the dark. It was to be 308
delivered the second day.

Cross-examination by Mr. Sullivan.

This was our first venture in printing as the *Law Journal* had previously been printed in other plants. Deering advised me on that Saturday afternoon in October, 1913, that there was a strike on at the Battle Creek plant and that members of the Machinists' Union would not handle the press and on his suggestion I went over to Mr. Stone's office as a mediator. Mr. Stone said there was no strike out there, for that out of three or four hundred there would be probably sixteen or eighteen of them who thought they had a grievance, and he was glad 309
to get rid of them. He denied there was a strike, said there was no strike; that there were only sixteen or eighteen who went out.

Q. When the press came over you differed with Mr. Stone somewhat, when you saw Mr. Deering on the job there? A. Of course I did not know anything about the strike.

Q. But the union men were withdrawn as a matter of fact? A. The truck drivers?

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Q. Yes, these union men. A. They ceased right there for a time.

Q. Somebody else put that press in? A. No, no.

Q. It went in your plant. A. Deering let it go in.

Q. And then after it went into your plant the members of the Pressmen's Union operated it and have since operated the press; is that not a fact? A. Surely.

We are a union shop; we have got to be. Mr. Stone said nothing to me about having discharged any men because they were members of the union.

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He said from sixteen to eighteen men went away and thought they had a grievance, but that there was no strike.

REMO ZUCCA, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Merritt.

In 1913 and 1914 I was secretary and manager of the *Italian Herald*, which signed a contract for a Duplex press about the middle of December, 1913. In January, 1914, Mr. Deering came to the office of the *Herald* at 243 Canal Street and asked for Mr.

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Vicario, president of the *Herald*, but I said Mr. Vicario was out. Deering said, "I am informed that the *Italian Herald* signed a contract with the Duplex Company; no right to sign any contract because the Duplex Company is on strike." I told him, "I did not see what the strike in Battle Creek has nothing to do with signing a contract for the press." He said, "It has something to do because the *Italian Herald* knows that the Duplex Company is an open shop and they shall not buy any

presses from them. We are informed that part of the press was already shipped to New York and as soon as the press come to New York we will give a trouble for the *Italian Herald* and the Duplex; we try to make all the trouble possible to the Duplex."

Cross-examination by Mr. Sullivan.

The *Italian Herald* had trouble with the Pressmen's and Machinists' Union for quite a while, but I have not been connected with the newspaper for two years. Deering said we should not buy a press where there was a strike on and appealed to us to 314
buy a press manufactured under union conditions, and I supposed when he referred to trouble he meant the withdrawing of the men from handling the press.

HARRY A. COCHRANE, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Merritt.

I have been president of the National Exposition Company, a New York corporation, since its organization in 1912, and among other things the company held expositions of printing machinery, supplies and appliances at the Grand Central Palace, 315
in New York City, coincident with the conventions of the American Publishers' Association and the Associated Press. Such expositions were held in April, 1913, and April, 1914, at which time these other organizations were holding their annual conventions, and at the first exposition there were 125 exhibitors including manufacturers of presses, linotypes, cutting and setting machines, paints, inks,

cardons, paper, type, devices and everything imaginable used in printing. The expositions usually started on a Saturday and ended the following Saturday. In each instance the exhibitor controls his own space, arranges for his own exhibits, employs his own help for building booths and installing machinery, and this was the rule followed both in the exposition of April, 1913, and April, 1914.

In . 1912, the Duplex Printing Press Co. entered into a printed form of agreement signed by both the parties, whereby the Duplex Company was to exhibit at the exposition of April, 1913. In April, just before the exposition opened, defendant Deering
317 called at my office, room 736, No. 200 Fifth Avenue, at my invitation, and asked whether we were going to hire union labor at the Palace, and I told him we always did. He then asked about the exhibitors and I said we had nothing to do with them as they were in the same position as a man who ran a store and paid rent for it, and they had the entire say about the use of the space, with a few minor exceptions as to the general conduct of employees and rules of a supervisory sort to keep the affair on a high plane. Deering said that I would have to arrange to have only union labor employed and that there were some shops going to exhibit that were not employing union labor. I told him I could do noth-
318 ing about the labor employed by the exhibitors as that was a matter for their own individual contracts and that some had open shops and some had union shops, as far as I understood. At another time he said that a strike would be called if union men were not employed by the various exhibitors. In view of this conversation I got in touch with the exhibitors and notified them that they would have to employ union labor in order to avoid trouble. A day or two before the exposition opened, I met Deering and

Neyland at the Grand Central Palace when trucks were arriving and certain machinery was being brought in and that that time there was a representative of the Riggers' Union and some other delegates or assistants around and the Mergenthaler Linotype was being unloaded or installed by their own men who were members of the Typographical Union. Thereupon Neyland, Deering and the representative of the Riggers' Union said that members of the Riggers' Union and the International Union would have to be employed or else there would not be anything else unloaded and no machinery erected. I said, "It is unfair to tie up the show because I have nothing to do with this," and I asked 320
if there was not some way to adjust it. He said there was no adjustment except to have their men do the work, and when I appealed to the exhibitor, he said the men could not do the work and the exhibitor's men were specially trained for the machines. This was all said in the presence of Mr. Deering. Then Mr. Hornstein, the advertising director, said that they had a new machine that the union men would not know how to put up. Deering said, "Our men can put up anything." Mr. Hornstein said, "Your men cannot." Deering then said, "Anyhow you will have to hire our men whether they can or not, or else there will not anything else be unloaded or there will not be any machinery 321
put up." Hornstein then said to me, "If this is the case of a hold-up, I am going to pull my exhibit out of the show," but I told him not to do that because it would hurt the show and that there must be some way of adjusting it, and asked him as a special favor if he would not employ International Association men in addition to his own in order to avoid the strike. He said they were not good because they would not know how to erect

the machinery and would have to stand around and draw money while other men did the work.

Q. What was done, if you know? Do you know what some of the exhibitors did with whom you talked about this? A. Yes. In that instance Hornstein hired men, showed me the men, pointed them out to me, while his own men were doing the work, they were sort of assisting as he said, but were only in the way. The request of the union was that the exhibitors employ only union men in all of the trades and these trades included carpenters, plumbers, steamfitters, sign painters, ma-
323 chinists, pressmen and maybe others, and Deering said that if any non-union men were employed by the exhibitors in any trade he would pull out the union labor. After I had issued instructions to the exhibitors to employ union men, I had a conversation with Deering and Neyland in which they said that the Duplex Company could not put in their exhibit. Deering said, "The Duplex Press cannot come in here because there was a fight on between the machinists and the Duplex Company," and for that reason they would not give them any men to put up the exhibit and they objected to their own men putting up the exhibit. I asked them if I could not arrange to hire union men to put up the exhibit, and he said no, because there was some
324 fight on at Battle Creek. I think Neyland was present when this was said. They said that the Duplex Company was on the unfair list and they wanted to unionize the Battle Creek shop. As a matter of fact the Duplex Press was in fact erected for this show in April, 1913, on Saturday night and Sunday after the show had closed for that Saturday night.

The 1914 show was held from April 18-25, and this contract (Exhibit 1) was entered into with the Duplex Company for an exhibit at that show. After

the contract was executed, Deering telephoned me and said, "Do you want any trouble up there?" I said, "No." Later he came to the office several times about March and April, 1914, and said that the Duplex Company could not exhibit and he would not allow them. I asked him if I could not employ his union men and supply them to the exhibitors at my expense to avoid trouble, strikes and hurting the show, and he said, "Yes," and he permitted me to do so in some instances. Then I had the conversation with him about the Duplex Company and I told him that I could not do anything about it, as I had a contract with them. He said 326
that would make no difference so far as their position was concerned. I appealed to him not to call a strike and cause any trouble, because rather than that I would pay for the union men labor who were needed, and we discussed the possibility of my employing enough union men to cover the show on condition that there was to be no trouble. When the question of the Duplex exhibit came up, this was knocked on the head, because he would not agree to let me employ union men for the Duplex Company work. I asked him if I could not employ union men to put in the Duplex exhibit and he said, "No, he would not furnish any union men unless the shop was unionized"; that Robert Hoe & Company and Goss Printing Press Company, who were 327
competitors of the Duplex Company, had put in a complaint to the union that if the Duplex Company was allowed to run open they were going to break away from the union (meaning Goss and Hoe). He made this statement when I was trying to persuade him against killing my show, simply because the Duplex Company was in it, and he said they had to make good here and enforce the union closed shop rule on Duplex or else they would lose out all along

the line. That was one of the reasons he gave for attempting to unionize the Duplex Company. I stated to Deering and Neyland more than once that if they called a strike and tied up the show, they were going to hurt people like the Dexter Folder and others who were friendly to them and they would make innocent people suffer on account of this fight with the Duplex Company; but he said they could not help that and had to enforce it, because it was their opportunity of getting back at Mr. Stone, the president of the company, and that if he could get away with this exhibit this year, he
329 could get away with murder; that was the exact wording of it. Neyland said that Stone had driven his brother out of Battle Creek so that his brother could not get a job there, and he wanted to get back at him. They said I was not on the unfair list, but when I asked them whether there was anybody else in the show who was on the unfair list, they mentioned the Oswego Machine Company, stating that they might follow the same policy with that as with Mr. Stone, but they did not think they would bother about it; that Stone was fundamentally the one against whom they wanted to enforce this ruling in this show. I said, "Do you realize that in doing it you are apt to ruin my business?" and they said, "Yes, but they could not help it and the only way
330 out of it was to cancel the Duplex contract." I said I could not do that as I had a legal contract, and Deering said, "You have got to cancel it or else there will be a strike on this show if they try to put that exhibit in," and he suggested that I take the matter up with Mr. Stone and try to get the contract canceled. I said I would do so, but when I did Mr. Stone would not consider the cancellation. I told him I did not want to lose the $675, the payment provided in the contract, and asked Deering

that if I succeeded in canceling the contract would the Machinists' Union make good what I lost, or, if I arbitrarily canceled it in the face of Mr. Stone's refusal, would the Machinists' Union stand any damages that I might sustain by virtue of the breach in case the Duplex Company sued me? He said he would have to take it up with President Johnston of the Machinists' Union at Washington and let me know about it, and later on he told me he had taken it up with Johnston and they would not stand anything. Previously he said they might stand the expense of defending a suit, but later that was called off too, and they refused to stand anything. 332 These defendants further said that they would notify the Seybold Machine Works and the Dexter Folding Company that if the Dexter exhibit came in they would all be struck. Mr. Deering said that Mr. Stone would get a lot of orders out of this show in New York, enough to keep the factory going for a long time, and he did not want to give him an opportunity to get them unless he unionized the shop. When I asked Deering whether he wanted to strike this show and injure innocent exhibitors and ruin my business on account of a grievance against one exhibitor, he said, "I cannot help it. I have orders from Johnston at Washington and we will pull all the labor union men out if the Duplex is allowed to exhibit." 333

Cross-examination by Mr. Sullivan.

When I refer to the job being struck or use the word "struck" or "strike," I refer to a withdrawal of the union men, and did not mean that anyone was to be physically injured. In order to secure the interests of employers and employees and secure confidence for this show, we had an Honorary Advisory Committee, including representatives of

334 *Harry A. Cochran—For Plaintiff—Cross.*

organized labor, among whom was the defendant P. J. Kepple, listed as vice-president of the International Association of Machinists, and we printed the names of the members of this committee on our letter paper. And there appeared on this letter paper J. J. Kepple, Vice-President of the International Association of Machinists. The idea was to secure the stamp of trade union approval. At the 1913 show the trouble which arose with Mr. Hornstein, advertising director of the Mergenthaler Linotype Company, was a jurisdictional trouble, the Machinists' Union claiming that they
335 should erect the press and the Mergenthaler Company having such erection performed by members of the Typographical Union. The dispute was as to who was going to unload and erect the machine, and the contention of Boering was that the gang employed by Hornstein conflicted with the jurisdiction of the Riggers' and Machinists' Unions. This particular fight had nothing to do with the Duplex, and was only a question of who was going to put up the Mergenthaler machine. In the first instance, Boering mentioned union machinists, and then he said he would have to have all union men, because he said the men would not work with non-union men.

Q. In other words, you had the opportuni-
336 ties, to have an absolutely non-union proposition or a union one? A. No, I did not have the opportunity, because I had no control.

Q. That was the situation. There had to be all union men employed, or none? A. That was his ultimatum.

Q. Not ultimatum. That was a physical fact. A. It was a physical fact.

Q. What did he say to you? Tell us now. A. He said we would have to employ union machin-

ists up there. I said I had no control over that, and he said, "If you put in any non-union machinists up there, there will be a strike and all the union men will walk out."

The very first question which Mr. Deering asked me on the first occasion in April, 1913, was whether I was going to employ union men, and that if I was, all of the men employed at the exposition would have to be union men, because if other men were brought in the union men would not work with non-union men. That was why I told him we were going to employ union men for our work. In April, 1913, Deering said that the Duplex press could not go in, and that they were not employing union men at Battle Creek, for which reason the union men in New York would not handle their product. What I understood was that they wanted them to unionize the shops, and for that reason there was trouble, and the union would not handle the product until they were unionized. He informed me that the machinists would withdraw their labor from the Duplex Company in installing their machines at the exhibit. 338

Q. And he informed you that in his opinion that if other men went in that were non-union that the union men in there would discontinue working? A. Yes. On account of what Deering said I wrote a letter to all of the exhibitors requesting them to use union help. 339

Q. And you did that because you knew that if any exhibitor employed non-union help in the building, that the other union men, irrespective of trade or calling, would cease work? A. Yes.

Q. You knew that? A. Yes.

Q. And you notified all the other exhibitors to get union help there? A. I did not know that they would cease working; I knew there would be trouble.

Q. Characterize for us what you mean by trouble? A. I will explain. I have had a strike in the building on the part of machinists, and the carpenters would not walk out.

Q. But I am asking you what a strike is, if it is not withdrawing the services; the men refuse to work? A. Certain men; I was not sure that they would all refuse to work.

Q. You assumed that some of them would refuse to work? A. Yes.

Xq. In other words, you knew if a non-union machinist came in there that all the union machinists, no matter where they were working in the
341 building, would cease work? A. I assumed that.

Xq. You did not know whether the carpenters would cease working? A. No.

Xq. Or the plumbers would cease working, or the steamfitters, or any other trade? A. No.

Xq. So when you wrote to these exhibitors and when you had the Dupdex in mind, what you believed was that the other machinists would stop working if non-union machinists came in there? A. Yes, and I was afraid that all trades would go out, but I did not know it.

Xq. But your mind was centered, though, on the fact that the union machinists employed by other exhibitors would not work in the same building
342 where non-union machinists were working? A. Yes.

Xq. That was primarily and forcible in your mind? A. Yes.

In 1913 the exhibit actually went in and, if I remember, I think Deering or Keppler, or whoever it was, gave them union men for the purpose of erecting the exhibit. I remember something to the effect that the union men were put on the job to erect this machinery, because of an understanding

between Mr. Stone and Mr. Keppler that the plant at Battle Creek was to be unionized, but I do not know just what it was as it has gone out of my head. The machinists did finally do the work after the fight had been on and the show had opened.

Coming now to the year 1914 all that I remember that Deering said when he called me on the 'phone was, "Do you want any more trouble?" The rest was mere generalities, and that was the trend of the conversation. If there was anything more about the strike at Battle Creek, I have forgotten it. After that I saw Deering several times in the latter part of March or the early part of April before 344
the show, and he told me there was a strike on at Battle Creek.

XQ. And he told you that the members of the International Association of Machinists could not handle the product of the Duplex Company made under non-union conditions while this strike was on? A. Yes.

XQ. Did he tell you that? A. Yes.

XQ. And he told you that they would not handle the product of the Duplex Company, did he not, for that reason? A. Unless the shop was unionized.

XQ. Unless there was some settlement made between the show and the time you were having that conversation, that they could not handle it? A. Yes. 345

When I suggested that I hire the union men instead of the exhibitors in order to avoid trouble, he said he would give me the union men I wanted.

XQ. Did he not also state that the members of the International Association of Machinists would not be permitted to handle the product of the Duplex Company because of the strike at Battle Creek, Mich., no matter who wanted them? A. I do not know whether it was that conversation or a later one.

XQ. But that was the force and effect of his statements made to you continuously from the time he first telephoned up to the time the show opened, was it not? A. That I could hire union men to do the work, and we talked about a certain number to cover the show so that there would be no trouble, those men could stand around and draw their breath if they wanted to, that was one of our words in the matter, but he refused to let me give any to Duplex.

XQ. In other words, any member of the International Association of Machinists would not be permitted to handle the product of the Duplex Company? A. Yes.

347 XQ. And he told you that the reason was because of the strike at Battle Creek? A. Yes.

Q. But you could have men for use with anybody else? Did he not say that? A. In that show, on that occasion.

Q. You saw a great many delegates while you were running this show? A. Yes.

Q. Tell us the delegates from the different organizations, not their names, but the different organizations that came in there and were represented by delegates and had talks with you as to the conditions in your place there? A. There were some of them together and some of them were not.

Q. Well, the fact that they were together did not
348 stop them from talking to you? A. But they made statements together to me.

Q. The Carpenters' delegate was there, was he not? A. Yes; but he was not in the mixup.

Mr. Sullivan: I move to strike that out.

The Court: Strike it out.

Q. The Carpenter's delegate was there? A. Yes.

Q. And the Plumbers' delegate was there? A. As far as I know.

Q. And also the Steam Fitters' delegate was there? A. I do not know.

Q. The Electricians' delegate was there? A. Yes.

Q. The Machinists' delegate was there? A. Yes.

Q. What other trades did you have employed? Was there any trade employed, any men employed in any trade during that show that the business agent or business representative of the union did not come and see you as to the conditions there? A. Yes.

Q. What trade? A. The carpenters never came over. 350

Q. You never saw the business agent of the carpenters? A. No.

Q. Never saw him about the place? A. No.

Q. You are positive of that? A. Positive.

Q. All of these men that came in there representing their trades spoke to you about the condition of the trade they were representing? A. Yes.

Q. Deering talked for the machinists, did he not? A. Deering told me that he had an agreement——

Q. I am not asking you that. A. He told me he represented the machinists.

Q. And the electricians' delegate for the electricians? A. And Mr. Deering, too; the two of them together said they had an agreement, and if we did not do what they wanted they would pull 351 their men out.

Q. But the electricians spoke for the electricians? A. Yes.

Q. He was talking for his men? A. Yes.

Q. You say there were non-union electricians employed there? A. Yes.

Q. And you employed those men at night? A. We employed them in the daytime too until they stopped them.

Q. Who stopped them? A. The Electricians'

Union came around and said if these non-union men worked in there that they would get Deering and the rest of the delegates together and would pull out all the union men.

Q. In other words, they told you if you were going to have non-union men working that the union men would not work? A. Yes.

Q. So you put in union men? A. No; we had some trouble with the electricians' delegate and put him out, and then we waited until night and put the electricians in there at night when the union men had quit.

Q. When the union men quit? A. Yes.

353 Q. There was no strike in 1914, was there, at this exhibit? A. At the Palace?

Q. Yes. A. No.

Q. You also testified that Mr. Neyland and Mr. Deering told you that the reason they were insistent that the strike at Battle Creek be settled before these men handled the machinery was that the Goss people and the Hoe people would withdraw the conditions which had been granted to their men? A. Well, we understood that if the Duplex Company did not accede the same conditions as the Goss and Hoe, Goss and Hoe would then throw open their shops.

Q. And that their purpose in insisting upon the
354 Battle Creek situation being cleared up, was to protect the conditions that existed in the Goss plant and Hoe plant? A. That was only one incidental condition. That was only just referred to once.

Q. But that was referred to in that way, that their purpose was to protect the working conditions, the hours of labor and the wages in the Goss and Hoe plants? A. That was one of the things mentioned. I asked them why they were so vindictive against the Duplex because all through there

was a vindictive trend shown by Neyland particularly but not so much by Deering, except by Deering in a business way. But Neyland was very wild that day. He shook his fist and said: "Stone drove my brother out of Battle Creek and prevented him from getting a job and I have a chance to get even and I am going to do it."

XQ. So that Neyland was not co-operating with Deering and the others solely on the question of business policy? A. Not solely.

XQ. The other men were moving on a question of business policy in refusing to permit their men to handle the machinery while the strike existed? 356
A. Except that Deering made the statement, he said, "If we let Stone get away with this, he will get away with murder."

XQ. I am talking about business policy. He told you if they organized the plant at Battle Creek that they would go ahead and handle the Duplex machinery, did he not? A. Yes.

The basic reason why I would not cancel the contract was not so much the loss of $675 as the fact that I did not want to break my contract. The Duplex Company could have employed non-union men if it saw fit and we could have done so and all the other exhibitors could have done so if they saw fit, for it is an open show, and the only result of employing non-union men would be that there would 357
be trouble in the form of a strike or the withdrawing of the union men.

XQ. If you employed non-union men and all of the other exhibitors had employed non-union men, you could have carried your show out in that way? A. Yes.

XQ. It was your desire to have union men that made you employ them? A. I did not have any desire to have any union men or non-union men. I desired to avoid trouble.

358 *Harry A. Cochrane—For Plaintiff—Cross.*

XQ. Why did you employ union men and non-union men? A. Because I was threatened they would pull out all other men if we did so.

XQ. You knew they could not pull out non-union men? A. But they threatened them.

XQ. I am asking you what you knew. You knew that the organization of the unions had control over only these men? A. No.

XQ. What did you believe? A. They have a control over men. They scare other men when they want to strike, that are not members.

XQ. Now, explain how they do that. Tell us that. A. By picketing, and other things.

359 XQ. That is the way they do it, by legal means? A. By picketing and by in many instances ——

The Court: Are you telling this of your own knowledge? A. Yes; on my investigation among the men who wanted to work, but who said, "We dassen't or we would get our heads knocked off with a hammer."

Mr. Sullivan: I ask that that be stricken out.

Mr. Merritt: I object to that; let us see whether that is not an appropriate answer to the question.

The Court: I do not think what the men told him is binding upon these defendants.

360 Mr. Merritt: I think as to what the sources of his belief are.

The Court: I think that ought to stand, because he was asked that; strike out the last part.

Mr. Sullivan: Exception.

There was no violence at our shows. A business agent of the Electrical Workers' Union was shoved out of the building by one of the detectives because

he got objectionable and began to threaten after I had rubbed the injunction on his shoulder.

Redirect examination by Mr. Merritt.

I am still engaged in the same line of business. The last conversation I had with Deering before the show opened in 1914 was a telephone conversation, when he asked what I was going to do about the Duplex. I said, "I have been waiting to find out what you are going to do in the event that I canceled the Duplex contract and whether you would stand back of me and pay the damages." 362 and he said he had received word from either the president or the vice-president of the International Union at Washington stating that they would not make good any loss, and I said, "Well, I cannot do anything about the cancellation of the Duplex contract, and I hope you will not do anything in the way of calling a strike, because we are innocent parties, and are only doing what we agreed to do. We are certainly between the tether and nether millstones, and we do not want to get the life ground out of us." He said he could not help it, and, although he realized we were innocent parties, he had instructions so that he had to stop the Duplex Company exhibit from going in the show, and would have to stop the exposition from opening 363 and the Duplex Company from getting any benefit out of it.

Recross-examination by Mr. Sullivan.

XQ. Did he say he would do anything other than take out the members of the Machinists' Union at that time? A. He made the statement that he would pull all the men off.

364 *Harry A. Cochran—For Plaintiff—Recross.*
Irving L. Stone—For Plaintiff—Direct.

XQ. His men? **A.** All the union men. He said all the unions were together on it.

I do not know why I did not state that in my affidavit, but this was repeatedly stated to me all the way through.

XQ. The union men that he represented were the machinists, were they? **A.** Yes; he said that he was working with the others.

I understood he represented the machinists and there were other representatives there who had charge of the other men. I do not remember of meeting a committee of the Board of Business
365 agents with respect to the manner in which union help should be employed at the show.

IRVING L. STONE, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Merritt.

Since the organization of the plaintiff, about thirty years ago, I was president and general manager until I became chairman of the board of directors, which position I now hold, and I am also practically general manager. The number of employees
366 of the plaintiff vary in different years and different times of the year from about 150 to 250, and at the time this suit was commenced, and in 1913 and 1914, there were probably 175 to 200 operatives in addition to erectors, salesmen and office help. Our presses are sold throughout the United States and in foreign countries. We employ salesmen to solicit orders, and from six to fifteen erectors, who look after the installation of the presses in the various cities for the customers. We do not do much in

stallation work, but deliver the machines to the purchaser, and it is his business to erect the press under the supervision of our expert. In the employment of these supervisors or erectors we have never discriminated between union and non-union men, and I do not know what proportion of the erectors have been union or non-union men, although some of them have carried union cards and others were non-union men. We build only newspaper presses, and they vary in size and capacity from a press that weighs 10,000 pounds to one that weighs ten times that. A single car takes our smaller presses, as a rule, but it would take at least four carloads to bring in such a press as we sold to the *New York World*. Our presses adapted to metropolitan uses would produce 30,000 complete papers an hour, but the number of pages that can be printed upon a particular machine depends upon its construction and size. We make both flat-bed and web presses. 368

Q. Would an ordinary pressman know how to operate it without instruction from its builders or someone connected with the builders? A. It is never expected that an unexpert man——

Mr. Sullivan: I move to strike that out.

The Court: He is the president of the company.

Mr. Sullivan: Will you let me ask him a few questions and we will see if he is qualified to answer that? 369

The Court: Yes.

By Mr. Sullivan.

Q. Did you ever operate a printing press? A. No, sir.

Q. You are the owner of the patent, are you not? A. Owner of the patent; I did not invent the machine.

Q. You simply bought the patent, and it is manufactured under the supervision of men who know the manufacture of printing presses? A. Yes.

Q. You never supervised the manufacture of these presses? A. Only in a general way.

Q. Just to see them erected? A. I did not see them erected very often.

Q. You never operated a printing press? A. No.

Q. Do you understand the operation? A. I do.

Q. For how long a time have you understood the operation of a printing press? A. Well, that understanding of mine has been going for thirty years.

371 Q. What are the duties of a pressman? A. To, what we call, run the press; operate it.

Q. What does he do in operating it; you have a web press? A. Yes.

Q. You build no flat-bed presses? A. Yes; we make a web flat-bed press, and others also; we build several styles.

Q. I thought I understood you to say that you only made newspaper presses? A. That is all; these are all newspaper presses; some are flat-bed and web presses at the same time. That is the peculiarity of our machines.

Q. How many pressmen have you observed operating presses? A. Scores of them.

372 Q. Have you ever taught any man to operate a press? A. No.

Mr. Sullivan: I submit that the witness is not qualified.

The Court: Do you object to the question?

Mr. Sullivan: I object to the question in the form in which it is put.

Objection overruled. Exception.

(Question repeated.)

By Mr. Merritt.

A. The ordinary pressman would not.

In our industry we have three competitors, R. Hoe & Company, of New York; Goss Printing Press Company, of Chicago, and Walter Scott & Co., of Plainfield, New Jersey, each of which operates a union shop. I understand that the Hoe Company is the largest, and is about ten times the size of the complainant, judging by the number of men it employs and the amount of business that it does. The Goss Company is about twice as large, but they would say more than that, and the Scott Company is more nearly equal to the complainant, but larger. 374
Strictly speaking, there are no other builders of newspaper presses in the country, but there are builders of job presses of some kinds, used sometimes to print small country newspapers. At the time this suit was started presses made by the complainant were being installed in several places in the Middle West and throughout the United States. These four contracts which you have shown me were our contracts covering the press for the *New York Law Journal*, the *Bollettina Della Sera*, the *Italian Herald* and Nicoletti Brothers.

I first met Mr. Keppler a long time ago, about six years ago. He called on me frequently in Battle Creek. I afterwards met him repeatedly at hotels 375
in New York. I met Mr. Keppler in New York in 1910, at the time we were erecting a press for the *New York World*, and the conversation lasted for two hours. Keppler was accompanied by Mr. Edwards, with whom I later became acquainted, and the other I now know as Mr. Deering, although I did not know him at the time, but he gave me his name. We had just shipped a large machine to the *New York World*, and it was in process of erection. Mr. Keppler and these two other gentlemen

376 *Irving J. Moss — For Plaintiff — Direct*

called at the hotel about 4 or 5 o'clock in the afternoon, and Mr. Keppler informed me that they had recently been informed at Washington, as I recollect, that this press, built in a non-union shop, was being erected, and he came to advise me that they could not allow its erection to proceed; that union men were being employed upon it, but that the press being constructed in a shop that was not unionized they could not permit their men to continue in the process of erection. There were about five men employed in the erection of the machine at that time, and the work would require about
377 two weeks. These men were employed by the *New York World*, but I am not absolutely certain as to that, because the job was exceptional, and we do not sell a press of that magnitude in so important an office on our regular contract forms. And I cannot recall, as I had no occasion to look this matter up, whether at the time they furnished the machinists to erect the press and the helpers or whether we did. I am inclined to think, however, that we had the press delivered and erected. At any rate, union men were erecting it under the supervision of one of our experts, and Mr. Keppler informed me that he would have to call off the men. It was then about quitting time in the afternoon, and he advised me that the men would not appear
378 in the morning to go on with the work. Of course, it would involve a great deal of loss and inconvenience. The conversation continued two hours, and I took up the equities of the case, and I did not then have any warm words, and never have in all of these years had a single warm, unpleasant word with any representative of the union. In brief, I told Mr. Keppler — of course, I am using about my own words: "Mr. Keppler, if these men belong to you you have control over them and wish to take

them away, it is your privilege. We cannot object. I simply want to know what you are going to do, and will immediately telegraph to Battle Creek to send on six of our men if the men now employed are not going to return in the morning." Then followed a little more of this general discussion, and the outcome of it all was that when I went to the door with these gentlemen to bid them good-bye, as they left the hotel from my room, I shook Mr. Keppler's hand, and said, "Mr. Keppler, shall I telegraph to Battle Creek?" and, to my surprise, he said, "No; these men may go on to work." That settled the question. 380

Some time after the installation of the *New York World* press, and before the events connected with the *Italian Herald* and Nicoletti Brothers, the plaintiff sold a press to the *San Francisco Sun*, and while it was there awaiting erection Mr. Keppler called on me here in New York, at the hotel, stating they had received a telegram in Washington from the union in San Francisco informing them that a press built by the Duplex Company was there, and wanted to know whether they should allow it to be erected. Mr. Keppler stated that he came to discuss the matter. During this time he asked me to unionize, and that was the object of his repeated visits to me in Battle Creek, as freely and fully expressed. I think he must have come 381
at least half a dozen times to Battle Creek to discuss these matters and induce us to unionize the shop. He came on this occasion to enforce his argument by the San Francisco situation, to the effect that we should unionize our shop and avoid all these things. After a long discussion we came to a conclusion whereby I told him that we were perfectly willing to employ union labor and did not discriminate against it, and that it would suit our con-

venience, and we would be glad to employ union men to assist us to erect the presses for customers under our supervision. It was then agreed between us that plaintiff should, when convenient, employ union men to do its work wherever the presses were being erected throughout the United States. I told him we would be glad to do this, because everywhere we found union men and could get them more conveniently than non-union men, and we would pay the union scale whatever it might be, and it was agreed that we should not be troubled any further in the erection of our machines, and under this
383 agreement we proceeded for some time. We agreed to give union men the preference in this work all over the country, but it had no reference to conditions at Battle Creek. We observed this policy thereafter, and it was the same thing we were doing before and were doing in the case of the *New York World* press. As a result of this the San Francisco machine was erected without any further objection. I had repeated meetings with Keppler at Battle Creek, and at one of them he stated, prior to the strike in August, 1913, that R. Hoe & Company, the Goss Company and the Walter Scott Company were
384 in direct competition with us, and that they were all unionized; that it was not fair to them that we should be out of the union; that it was their duty to equalize conditions throughout the country in such cases as these, and, therefore, they must insist that we unionize. I told Mr. Keppler on more than one occasion that if they would secure the equalizing of selling conditions throughout the United States we would be very glad to equalize conditions in the manufacturing department. I could explain what I meant by that. It was very important. I told him that we were under a tremendous handicap in the manufacture and sale of

our goods, and that it was impossible for him to equalize our conditions in the field as manufacturers and sellers; that it would be to our advantage, surely from a commercial point of view, to equalize all around, if that were possible, but it was impossible. May I state why it is impossible?

Mr. Merritt: I think not, unless Mr. Sullivan wants it. He will ask you.

I do not recall that Mr. Keppler ever charged me with discriminating against union men. In August, 1913, our superintendent told me that it was necessary to reduce our working force. At that time 386
I did not even know what employees were in the union and what ones were not, for we ran a perfectly open shop. My superintendent said we must lay off fifty men, and I pleaded for the men, as I have always done, and said, "Lay off as few as possible," so that we finally agreed upon twenty-five. On August 27th, shortly after the men had been laid off, a strike was called and about fourteen men quit in the factory and three erectors in the field, one in Windsor, Canada; another, Mr. Burkle, in Mason City, Iowa, and the other, Mr. Soeller, somewhere in south Indiana, Kentucky or Tennessee. Each of these erectors were engaged in supervising the erection of presses in these respective cities and dropped their work in the midst of it. At the 387
time the strike took place there were about 175 or 200 men employed in the factory, and only eleven quit. After that the factory was picketed for months, and Mr. Shepard, who was the erector at Windsor, was one of the most persistent pickets, but he is now working for us.

I had some conversation with George Berry, president of the International Pressmen's Union, and received this letter from him.

388 *Irving L. Stone—For Plaintiff—Direct—Cross.*

(Letter marked Exhibit 6 and offered in evidence.)

I also received a letter from J. J. Keppler, dated August 22nd, 1913.

(Letter marked Exhibit 7 and offered in evidence.)

Cross-examination by Mr. Sullivan.

I am still friendly with Mr. Keppler and Mr. Deering, although I am not as well acquainted with Mr. Deering.

389 Q. And you had several conferences with Mr. Keppler, running from 1909 to date, in which you attempted to arbitrate or settle the working conditions in Battle Creek, did you not? A. No, sir.

Q. That has been his attempt? A. That is the way he put it, but we do not recognize any difficulties at Battle Creek.

I received literature to the effect that the machinists were about to strike for an eight-hour day in the industry and to strive to get that.

Q. In the industry; the words were used, "in the industry," that they were going to strive to get that? A. Yes.

Several communications of that kind came from
390 Washington. I know the R. Hoe Company had a strike in 1910, and that the letter just offered in evidence purported to contain the settlement agreement with that company with respect to the hours of machinists and their wages in the manufacture of printing presses. During the repeated visits made upon me by Mr. Keppler in Battle Creek since 1911 I took him through the factory once or twice. I remember there was some question about the erection of our machinery for the exposition in April, 1913, but I do not recall any meet-

ing with Mr. Keppler at that time.

Q. But there was a conference had with respect to organizing your men at Battle Creek? A. Several conferences of that kind.

I never agreed with Mr. Keppler that I would organize my men, and I always told him that he would never organize our shop.

Q. Do you remember your men being called together at Battle Creek after the exhibit in 1913? A. In our works?

Q. Your men that worked in your plant at Battle Creek being called together for the purpose of organizing? A. In our works?

Q. Yes. A. I do not remember. 392

Q. Do you remember attending that meeting and urging the men to organize? A. No; I never did.

Q. Let me refresh your recollection. These men met in a hall, not at your plant, but they were the men employed at your plant. A. That is another thing.

Q. They met there and you addressed that meeting? A. I did.

Q. That was a meeting that was called for the purpose of forming an organization of your workmen? A. I do not know——

Q. I am asking you a question; it was called for the purpose of forming an organization of your workmen? A. I think not. 393

Q. Is it not a fact that you addressed that meeting and urged the men to join an organization? A. My recollection is that I attended one of the meetings of the Machinists' Union there, or some union. That meeting was not called, so far as I know, for our men, but I attended one of their regular or periodic meetings and I remember distinctly what I said.

Q. Did you make an address at the meeting? A. I did; a short one. I testified that a number

394 *Irving L. Stone—For Plaintiff—Cross.*

of our men were discharged because there was no work, but I never made any investigation to determine that each and all of them was a member of the union, which was formed at the meeting where I spoke, nor did I try to find out the names of the men or their affiliation with the union. I do not know the names of the men that work in our plant, because I did not have immediate charge of the machine shop.

Q. There were nineteen men discharged on the 22nd of August; that is a fact, is it not? A. It may be.

395 I cannot testify that the men discharged were not men who had joined the union at the meeting I attended. It was never called to my attention that one of the men was secretary of the union, or that those discharged were all union men. The discharge was on August 27, and the strike took place on August 27, 1913. I understood that the men struck because they were called out by the union, and I did not hear any claim to the effect that the superintendent had discriminated against or discharged union men, but there has been a great deal of discussion in the last two or three years, and that may have been referred to, but I know nothing about it. It was never called to my attention that we had discriminated against the union and
396 that the men had gone out on that account, because we never have discriminated. I do not know what is in the mind of the superintendent. I do not know to-day whether the men who were discharged were members of the union or not.

Q. You did not know, then, whether your superintendent did discriminate against the men or not? A. I do not know.

Mr. Keppler and Mr. Edwards had continuously urged arbitration of the strike. We are working

our men ten hours a day at Battle Creek at the present time, and we pay them from $2 to $10 a day, but do not have any uniform minimum scale.

Mr. Merritt: This is not cross-examination.

Mr. Sullivan: I am assuming all responsibility for it.

During all this time from 1909 to 1913, up to the time of the strike, Mr. Keppler was urging me to establish an eight-hour day and the union rate of wage as a minimum scale.

Q. He had told you at all of these conferences 398
and subsequent to 1909 and between that date and 1913 that there was an effort being made by the International Association of Machinists to create an eight-hour day in this industry that you were engaged in? A. Yes.

Q. And he told you that in this whole industry he was trying to create union conditions as to the payment of a minimum wage for the eight hours of labor, did he not? A. Yes.

Q. Certain letters were sent to you which were received by others, as far as you know? A. Yes.

Q. And the effort of the International Union was not only to have you establish an eight-hour day and pay a minimum rate of wage to the men employed as machinists, but to have that done in all plants 399
in the country where your industry was involved; you know that, and had been told that? A. Yes.

Q. So you, as far as this union was concerned in their requests and demands upon you, they were similar to the demands made upon the Hoe Company, upon the Goss Company and upon the other printing press manufacturers in the country; that is a fact, is it not? A. I simply took the position that they had no right to make any demand.

400 **Q.** I appreciate what your position was, but I am asking you a question; their demands were similar? **A.** If you call it a demand; I do not recognize a demand of that sort.

Q. But that is the fact, that they were asking the same from others? **A.** Asking; yes.

Q. That they were asking from you? **A.** Yes.

Q. So that they did not select you from all the printing press manufacturers or men in this industry to ask these things of, did they? **A.** No.

Q. Or to attempt to enforce them? **A.** No.

Q. As a matter of fact, you knew that your concern was the last one upon which a strike was called
401 to enforce these conditions, did you not? **A.** No; I did not know that.

Q. Let me refresh your memory; you have kept yourself informed? **A.** I think with this case——

Q. You have kept yourself informed, in full knowledge of the conditions existing in your industry, of course, did you not? **A.** No; not very fully.

Q. You read the different trade magazines? **A.** It is a matter of common report.

Q. Trade magazines, traveling about the country, obtaining information, as far as you could, as to the general conditions? **A.** I never interested myself very much in the conditions of our competitors.

Q. You knew there was a strike in the R. Hoe &
402 Company, which resulted in the establishment of the eight-hour day and the payment of a minimum recognized rate of wages for eight hours of labor? **A.** I did not know it definitely, but I understood it to be the case.

Q. Did you not get in a letter which you have put in evidence a copy of the terms of the settlement with R. Hoe & Company? **A.** I do not know absolutely that what Mr. Keppler writes to me is infallible.

Q. But that was your knowledge from your general understanding? A. That was the source of my knowledge.

Q. And you knew the Goss Company—that between 1909 and 1913, in August, that the International Association of Machinists had been in conference with the Goss Company, did you not? A. I heard that; I did not know that very definitely. I never paid any attention to it.

Q. Did you not also hear that those conferences resulted in having the machinists employed in that factory working an eight-hour day and the establishment of a minimum rate of wage for the machinists? A. Mr. Keppler told me so repeatedly, and that is all I know. 404

Q. You believed Mr. Keppler when he told you that? A. I do; I believe it now.

Q. Have you ever had any reason to disbelieve that? A. No.

Q. And the same applies to the other manufacturers at Plainfield? A. Walter Scott?

Q. And all of these negotiations with the Goss Company and the Scott Company and the strike at R. Hoe was while you were in conference with Mr. Keppler? A. I did not confer with him; I listened to his requests.

Q. You had something to say also? A. Yes; when he produced an argument I produced my argument, but it was not a conference. Do not dignify it by the name of conference. I never conferred with any union man. 405

Q. These meetings; shall we use that term? A. Any term.

Q. These meetings that you had with Mr. Keppler covered the period of this activity that we speak of which resulted in the eight-hour day and the minimum scale of wages was established in the

406 *Irving L. Stone For Plaintiff Cross.*

Hoe plant and the plant at Plainfield and the Goss plant? A. I so understood it.

Q. So that your organization was the last one of all at which any drastic efforts were made to create the eight hour day and establish the minimum scale of wages? A. That is a good word, "drastic."

The Court: You did not mean drastic?

Mr. Sullivan: Drastic to the extent of having any recognized labor dispute between each other, industrial dispute. There was an industrial dispute. We allege a lockout and they allege a strike, and I assume the
407 Court will recognize the word drastic to mean either lockout or strike.

I know that the Machinists' Union was endeavoring to have this done in all the plants in the country where our industry was involved, and that they were asking the same from us as they were asking from the Hoe Company, the Goss Company and other printing press manufacturers, so that we were not selected from the printing trades industry for these demands or the attempts to enforce them, and I understood that the Goss Company, the Hoe Company and the Scott Company, at Plainfield, had all granted these conditions, so that the last one in which any drastic efforts were made to create
408 the eight hour day and establish a minimum scale was our concern. In our industry I recognize the Hoe Company, the Walter Scott Company and the Goss Company and ourselves, but there are many others in the printing trades industry where machinists were employed to build presses for other purposes, but they are not in competition with us. There are many other manufacturers of printing presses not in our line. Mr. Keppler informed me that they were endeavoring to establish uniform

conditions in the industry as to an eight-hour day and minimum scale of wages and wished to equalize the different lines. The press for the *San Francisco Sun* was, I think, erected by union machinists in San Francisco.

I had my first interview with Mr. Keppler with respect to the erection of presses at the time the press came to the *New York World*, and we were deeply interested in having that press erected as speedily as possible.

Q. And after a conference Mr. Keppler stated to you that he was going to allow and permit the men to finish the erection of the machine? A. Yes.

Q. And he did say "permit and allow," did he not? A. Yes; although that incident and the incident relating to the *San Francisco Sun* were before the men were discharged in August, 1913, and from the time of the agreement with Keppler the presses continued to be erected by members of the Machinists' Union without trouble, until the strike in August, 1913, and it was after that date that the Machinists' Union refused to handle our machinery for the purposes of erection. We had talks after August, 1913, and efforts were made by the union to have the matter arbitrated, whatever might be the dispute between us. I do not believe it would increase our sales if we organized our factory and had all of the men working in harmony with us. I am bringing this action at the instigation of my own company, and the company will pay the expenses of the litigation if it is able to. It is not being paid by an association or anyone else, as far as I know, and we are paying a whole lot of money for it.

After the strike in Battle Creek non-union men came in to work, and recently we had a strike of them, and most of them returned to work.

412 *Irving L. Stone—For Plaintiff—Redirect.*
Lon S. Maddock—For Plaintiff—Direct.

Redirect examination by Mr. Merritt.

When I said that we had no trouble between the date of the San Francisco incident and the strike in August, 1913, I was not referring to the exposition at all, but only to field work. I do not know whether the men who recently quit work were union or non-union men.

LON S. MADDOCK, a witness called on behalf of
413 the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Merritt.

I have been an erector or road man for the plaintiff for something over seven years, and have supervised the erection for the plaintiff of forty-eight presses of one style, exclusive of other presses. In doing this work the men employed to install the presses are employed by the customer. I had something to do with the erection of the press for the *Italian Herald* in February, 1914, and was working in connection with Charles Young.

In February, 1914, when we were installing the press, defendant Deering came to the office of the
414 *Italian Herald* after I had been working there four or five days, and asked me to leave the work, and I told him, "No." Then he wanted to know if he saw Edwards, president of the Webb Pressmen's Union of New York City, and had him take my card away whether it would make any difference, and I told him I did not believe Mr. Edwards could do it, and then he said, "Very well, my laddie," and walked out. I continued to work there that day and the following day.

Lou S. Maddock—For Plaintiff—Direct. 115
Irving L. Stone—For Plaintiff—Recalled.

Q. I wish you would tell the Court what happened on your way home the following day.

Mr. Sullivan: I object to that unless there is some connection.

The Court: We will find out in a minute. Objection overruled.

Mr. Sullivan: Exception.

The Court: We will strike it out if it is not connected.

The following day, when Young and I were going home, about 5 o'clock, and had gone about 300 feet beyond the *Herald* office, two or three men assaulted us, clubbed us, kicked us and left us unconscious on the sidewalk. 116

Mr. Sullivan: I ask at this time to strike out the answer.

The Court: I will take it.

Mr. Sullivan: There is no connection in any way with the defendants or any of them.

Objection overruled. Exception.

I came to first, and Young was still lying on the sidewalk.

Mr. Sullivan: I object to this as not responsive to the question. 117

Objection overruled. Exception.

I did not know any man, and could not describe or identify them.

IRVING L. STONE recalled.

Direct examination by Mr. Merritt.

I testified that the plaintiff was operating on a ten-hour basis, but we have no definite rule. We

418 *Irving L. Sias — For Plaintiff — Recalled.*

depend a good deal upon the demand, which usually during the winter months we run eight hours a day.

Cross-examination by Mr. Sullivan.

We have been running the eight hour day in the winter for years, but we are working ten hours now, and this is winter. We usually run ten hours a day, but during the months of November, December, January and February, which depends upon the pressure of the work.

Mr. Keppler talked a good deal about the eight-
119 hour day and tried to arbitrate, also he wanted the minimum scale of wages, and these were the only two questions involved.

Redirect examination by Mr. Merritt.

Mr. Keppler asked repeatedly for the unionizing of the plant.

Recross-examination by Mr. Sullivan.

Q. But that was not demanded, was it, the unionizing was an arbitrable question, the question of the hour, of wages and minimum scale? A. Unionizing was what he wanted; he insisted upon it always.

420

Mr. Merritt: We rest.

Mr. Sullivan: The defendants rest.

TESTIMONY CLOSED.

Mr. Merritt: I think I made a statement that any question of damages should be sent to the master.

Mr. Sullivan: If the Court decides there is no necessity for such action.

Mr. Merritt: Exactly.

The Court: The question of damages should be reserved, if it is held that the plaintiff has a cause of action.

Mr. Sullivan: Now, first, the defendants ask for a decree in favor of the defendants and the dismissal of the complaint as against the District Council No. 15, or Local Union No. 328, and as against all defendants except the defendant Emil J. Deering, individually; William Bramley, individually, and Michael T. Neyland, on the ground that the pleadings were not served upon an officer, as required by statute. None of these three men, who it is admitted are the only men that are served, were the president or treasurer of the local union or district council upon whom process could be served in order for the Court to have jurisdiction. 422

The Court: I will reserve decision on that.

Mr. Sullivan, you place your motions on the record and I will reserve decision on all of them and take your briefs.

Mr. Sullivan: We ask for a decree in favor of the defendants and dismissal of the complaint on the ground that there is no proof of any conspiracy between Emil J. Deering, William Bramley and Michael T. Neyland or between Deering, Bramley and Neyland and any others upon which this cause of action can be predicated; that any act or acts which is alleged to have been committed were legal acts within the purview and rights not only 423

of the defendants Deering, Bramley and Neyland, but of the organization which it is alleged that they represent.

Third, I ask for a decree in favor of the defendants and dismissal of the complaint on the ground that all of the acts alleged to have been committed are legal acts, and that the Court is without authority to issue a restraining order under Section 20 of the Public Laws of 1913, being United States statute at large, Volume XXXVIII, being the act of the Sixty-third Congress——

The Court: You mean the Clayton Act?

Mr. Mulholland: An act of Congress passed October 15th, 1914, known as the Clayton Act; that will identify it.

Mr. Sullivan: We ask your Honor to dismiss and for a direction of a verdict in favor of the defendants on the ground that there is no evidence of any character of any conspiracy in this case.

(Endorsed: Filed U. S. District Court, S. D. of N. Y., Apr. 23, 1917.)

Complainant's Exhibit 2. 427

PLAINFIELD PRESS COMPANY

Plainfield N. J.

12-31-15

Pl'ff Ex. No. 2
U. S. Dist. Court
S. D. of N. Y.
Jan 16 1917
Eq 11-166

(U. S. District Court
FILED
Apr 23 1917 428
S. D. of N. Y.)

Mr. Charles F. White,
Duplex Printing Press Company,
World Building, N. Y. City.

Dear Mr. White:

Herewith you will find the Hoe bulletin, which you so kindly loaned me while we were considering the press matter.

After looking at the matter from all angles, and considering local conditions with regard to the strong machinists union, and in view of the fact that the Scott factory is in Plainfield and employs 429
a large number of men three shifts a day, we have decided that the Scott press is the press to buy, and have entered into a contract with that company for one of their machines. You will perhaps remember that we had considerable difficulty, and not a few subscriptions stopped when we put the F' thed Duplex in, because of labor troubles at your factory, and we do not care to encounter anything of that kind again. There are a large number of union

430 *Exhibits.*

machinists in this city, and the union is recognized by practically every shop, so that we do not care to run any risks again.

The writer appreciates your courtesy in this matter, and wishes to assure you that you left no stone unturned to present your case to us, and that it is in no way because of failure to properly do your work on your part that we have bought elsewhere.

Very truly yours,

(Signed) LESLIE R. FORT,
Manager, Plainfield Press Company.

431 Received
Jan 4 1916

Complainant's Exhibit 4.

Original

CONTRACT FOR SPACE IN THE NATIONAL PRINTING PUBLISHING, ADVERTISING AND ALLIED TRADES EXPOSITION

New Grand Central Palace, New York City, April 18th to 25th, 1914, Inclusive

432 AGREEMENT dated this 26th day of August, 1913, by and between Duplex Printing Press Co (hereinafter called exhibitor), and National Exposition Company, Inc., its successors and assigns (hereinafter called Company)

IN CONSIDERATION of the sum of One Dollar and other valuable consideration, each to the other in hand paid, the receipt whereof is hereby acknowledged, the exhibitor agrees to take, lease, occupy

and maintain a creditably attended exhibit in space No. 4 as designated on the official diagram for the National Printing, Publishing, Advertising and Allied Trades Exposition, to be held in the New Grand Central Place, New York, from April 18th to 25th, 1914, inclusive, the product hereinafter designated only, and the Company agrees to hold and reserve said space for said Show, for said exhibitor upon and after due acceptance of this agreement by said Company, except as hereinafter set forth.

IT IS MUTUALLY AGREED between the parties hereto that the said exhibitor shall pay for the said space at the said Show the sum of $675, as follows: 434

One-quarter thereof upon the signing of this agreement, which said sum is to be returned to said exhibitor if this agreement be not accepted as herein provided, and the balance of said sum on or before the 18th day of March, 1914.

IT IS FURTHER MUTUALLY AGREED that if the said exhibitor fails to comply in any respect with the terms of this agreement, that then the Company shall have the right, without notice to the exhibitor, to sell or to offer said space for sale at public or private sale, the said exhibitor to be liable for any deficiency, loss or damage suffered by the Company by reason of the premises herein stated, which said deficiency, loss or damage, the said exhibitor agrees to pay to the said Company, upon demand, together with any reasonable expenses and cost incurred by reason thereof. 435

In addition, it is mutually agreed that actual occupation of said space by a properly attended exhibit is of the essence hereof, and that should the Company be unable to effect a sale of said space as herein provided, said Company is expressly authorized to occupy or cause said space to be occu-

436 *Exhibits.*

pied in such manner as it may deem best for the interests of said Show, without any rebate or allowance whatsoever therefor to said exhibitor and without in any way releasing said exhibitor from any liability hereunder, and said exhibitor expressly agrees to pay said Company the full sum as hereinabove set forth.

IT IS FURTHER MUTUALLY AGREED that should the Company consider it inadvisable to hold the said Show at the times and in the place herein provided, that then the Company shall have the right to change the date and place when and where said
437 Show is to be held, by giving to the said exhibitor written notice thereof by mail addressed to the address given below, at as early a date as may be practicable.

IT IS FURTHER MUTUALLY AGREED that the exhibitor shall not assign or sublet any part of said space without the consent of the Company thereto in writing, duly signed by one of its authorized officers.

IT IS FURTHER MUTUALLY AGREED that the conditions, rules and regulations printed on the reverse side hereof are made a part hereof as though fully incorporated herein, and that the said exhibitor
438 agrees to be bound by each and every one thereof, and that the Company shall have full power in the matter of interpretation, amendment and enforcement of all said rules and regulations, and that any such amendments when made and brought to the notice of said exhibitor shall be and become a part hereof as though duly incorporated herein and subject to each and every the terms and conditions herein set forth.

No agreement with reference to the matters here-

in contained, shall become a part hereof, unless duly endorsed hereon.

THE DUPLEX PRINTING PRESS CO.
I. K. Stone
Asst. General Manager.

Dated Oct 8/13

Accepted by NATIONAL EXPOSITION COMPANY, INC.
By Harry A. Cochrane President.

Complainant's Exhibit 5. 440

(*Sample of contracts offered in evidence.*)

IN DUPLICATE

Battle Creek, Mich., Dec. 11, 1913

THIS AGREEMENT entered into this 11th day of December 1913 by and between The Duplex Printing Press Company of Battle Creek, Michigan, a corporation organized under the laws of said State, first party, and Frugone Balletto & Pellegatti Ptg & Pub. Co., Publishers of Bolletino della Sera of New York City second party, hereinafter to be designated respectively as the first party and the second party in this agreement, witnesseth as follows: 441

1. The first party, in consideration of the hereinmentioned agreements of the second party, does hereby contract and agree to deliver to said second party one of its improved Duplex Rotary Printing Presses of the style known as Duplex Tubular Plate Press with folder, the press to have the capacity, when properly operated, to

442 *Exhibits.*

print 4, 6, 8, 10, 12, 14 and 16 pages, to be of 7 columns printed matter of 13 ems pica to each column, with 6 point column rules, the length of columns including headline to be $21\frac{1}{4}$ inches, the sheet cut to be $22\frac{3}{4}$ inches, the center margin to be 1 inch, width of webs to be 17 and $33\frac{1}{2}$ inches, the folder to deliver the product folded to half page size, at the rate of 25000 copies of 4 to 16 pages each per hour and also to fold and deliver at quarter page size at properly reduced speed, the press with half page folder to be at once delivered to the second party, on the Ward Line Dock, East River, and the combination folder for substitution
443 to be completed and shipped on or before February 10, 1914 or as soon as possible, the folder replaced to be delivered to the Duplex Ptg Press Co.

2. The first party hereby agrees that the herein-specified machinery shall be constructed in a first-class workmanlike manner and of first-class material.

3. The first party agrees to blanket said press complete and to furnish two sets of roller stocks, and wrenches and tools for the operation of the press.

If, upon test said machinery does not satisfy the requirements of this contract, this contract may be
444 then declared, by either party, null and void and both parties shall be released from all obligations hereunder; otherwise the second party shall accept it as in full performance of the first party's obligation in that regard, but this acceptance shall not relieve the first party from its guaranty as to quality of material and workmanship. The failure or refusal of the second party to attend this test or to send a representative as above provided shall be considered as an acceptance under this contract.

Delivery of said machinery, properly packed, to the carrier shall be deemed a delivery to the second party.

5. The first party further agrees to send a competent man, or men if necessary, to superintend solely the erection of the above machinery in the pressroom of the second party, and the second party agrees to pay $8 per day for the time and expenses of this man, or for each man if more than one, from the time of leaving factory until his return, and also the cost of transportation, and to furnish, from the beginning of the erection of said machinery, a competent pressman and stereotyper 446
to be instructed how to properly operate the same.

6. The second party agrees to furnish suitable foundations for the press and folder according to specifications furnished by the first party, to pay the freight on said folder from the point of shipment, also cartage at destination, and to furnish all necessary help for moving and setting up said machinery, also to furnish the necessary stereotype metal, power, belting, and all necessary connections from driving shaft on press or stereotype machinery, and to furnish and put in place all pipes, fittings and other connections necessary for their operation, also composition for ink roller stocks. Should any delays occur in the erection of the ma- 447
chinery on account of the failure of the second party to have foundation in readiness, power provided, or other cause, the second party shall be liable for the expenses thereby incurred by the first party.

7. In consideration of the foregoing the second party agrees to pay to the first party the sum of Nine thousand five hundred Dollars ($9500.00), said amount to be paid as follows:

Upon the execution of this agreement, Fifty Dol-

448 *Exhibits.*

lars when the press is set up in good running order in the pressroom of the party of the second part Four thousand five hundred Dollars ($4500.00), and the balance in payments to be evidenced by notes payable at A Cuneo's Bank (28 Mulberry St New York) with exchange given by the second party, dated and drawing interest payable annually at six per cent. per annum from the date of delivery of the press as follows:

Nine notes for Five Hundred Dollars ($500.) each and one note for Four Hundred and Fifty Dollars ($450.) maturing successively, one every three months.

449

THE DUPLEX PRINTING PRESS CO.
Irving K. Stone
Asst. Gen'l Manager

FRUGONE, BALLETTO & PELLEGATTI PRINTING & PUBLISHING CO.,
Francesco Pellegatti President
Frank S. Frugone,
Treasurer and Business Manager

450

Complainant's Exhibit 6. 451

INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA
Office of the President

Rogersville, Tenn., Oct. 10, 1913.

Mr. I. L. Stone,
President Duplex Printing Press Company,
Battle Creek, Mich.

My dear Mr. Stone:

I have for some time past intended writing you in reference to the controversy which you have with 452
the International Association of Machinists.

I am interested to no small degree in the success of the International Association of Machinists because of the very friendly and contractual relationship existing between that organization and the International Printing Pressmen and Assistants' Union. In addition I am interested in the welfare of your concern because of my personal acquaintance with you as well as my knowledge of the very valuable machine you are producing, and with these things in mind I have determined to extend my good offices with the hopes of being able to bring about some satisfactory adjustment of the present dispute in order that the Machinists Association and your 453
institution may work in perfect harmony and to the interest of the industry of which we are all dependent upon.

The controversy referred to above has been brought to my attention a number of times officially because of the contract we have with the International Association of Machinists, and the matter has been a source of considerable irritation and embarrassment to our membership throughout the country who are called upon to operate your ma-

chines. The circumstances, therefore, will not permit of the genuine free attitude that I am sure we all hope for.

I am now taking this means of corresponding with you with the hope that we may be able to bring about some adjustment, and prevent what appears to me now as being an inevitable disagreement between the Pressmen in various sections of the country and the Duplex Company.

I assure you of my sincere desire to be of assistance in this matter.

With kindest regards, I beg to be

455 Sincerely yours,

GEO W BERRY
President.

Complainant's Exhibit 7.

Aug 22, 1913

Mr I. L. Stone
Pres. Duplex P P Co,
Battle Creek Michigan

Dear Sir:—

456

As numerous conferences have been held with your Company relative to the eight (8) hour day, and as the Machinists and other Metal Trades in this industry have made progress along this line, and as numerous Employers have conceded the eight (8) hour day, I have been instructed by our General Board of Directors to submit to your Company a definite proposition relative to eight (8) hour day, and wage question. I therefor dezire to

submit the following as having been the policy under which the eight (8) hour day was brought about with the R. Hoe P. P. Co., of New York.

Our original proposition for the settlement of the three (3) months strike (for the eight (8) hour day) during the months of May, June and July of 1911, was as follows:

The then nine (9) hour day being in vogue provided for minimum daily wage for Machinists of ($3.25), this minimum to remain in vogue during the gradual reduction of hours from Nine (9) to Eight (8) hours per day.

Aug. 1st, 1911, to April 1st, 1912, Eight and 138
three quarters ($8\frac{3}{4}$) hours per day.

April 1st, 1912, to Dec. 1st, 1912, Eight and one half ($8\frac{1}{2}$) hours per day.

Dec. 1st, 1912, to July 1st, 1913, Eight and one quarter ($8\frac{1}{4}$) hours per day.

Thereafter the Eight (8) hour day.

Owing to the change in pay rolls and difference of fractional parts of the cent in the make-up of same for minimum rate men and those receiving above same a further conference was held, and following proposition agreed to, the same was put into printed form and each Machinist was provided with copy in pay envelope.

Sept. 6th, 1912. 139

To the Employee's of R. Hoe P. P. Co.

At conference held today the following modifications of the present working agreement with the Int'l Asso. of Machinists and this Company were agreed upon:

First: Commencing Thursday, Dec. 5, 1912, and until Wednesday night March 19, 1913, the working hours will be from 7:42 A. M. to 12:00 and from 1:00 P. M. to 5 P. M., or a total of 8.3 hours per

day, making an aggregate time per week of 49 8 10 hours.

Second: The rate per hour for minimum wage men during the period from Dec. 5, 1912 to March 19, 1913, will be 39c per hour, or $19.42 for a full week's work.

Third: Commencing March 20, 1913, and until Wednesday evening, July 2, 1913, the working hours will be from 7:48 A. M. to 12:00 and from 1:00 P. M. to 5:00 P. M., or a total of 8.2 hours per day, making the aggregate time per week 49 2 10 hours.

461

Fourth: The rate per hour for minimum wage men during the period from March 20, to July 2nd, 1913, will be 40c per hour, or $19.68 for a full week's work.

Fifth: Commencing Thursday, July 3, 1913, the working hours will be from 8:00 A. M. to 12:00 and from 1:00 P. M. to 5:00 P. M., or a total of eight hours per day, making aggregate time per week forty-eight hours.

Sixth: Commencing July 3, 1913, the rate per hour for minimum wage will be 41c per hour, or $19.68 for a full week's work.

462 Seventh: All weekly shortages in pay due to the necessary avoidance of fractional cent rates are waived. The consideration for this waiver lies in the fact that beginning Mar. 20, 1913, the rate per hour will make the aggregate weekly pay of minimum men $19.68, instead of $19.50, as provided for by the agreement.

In addition to the foregoing the following was also agreed to:

Overtime

Time and a half will be paid for the first 4½ hours work after the recognized quitting time and double time thereafter.

Double time is also to be paid for Sundays and all legal holidays as follows: New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Thanksgiving Day and Christmas Day.

Rules Governing Men on Outside Work.

When machinists are required to leave the Works 464
and engage in any manner in making, assembling, dismantling, erecting, installing Machinery tools therefor or parts thereof, they shall be paid at least $1.25 per eight (8) hour day, double time for overtime, also for Sundays, holidays and Saturday afternoons. (Many localities have higher minimum rate than mentioned herein)

When such machinists are working on the outside and can return to their homes each day, cars fare and reasonable expenses will be allowed.

When they cannot return to their home they are to receive for their expenses $2.50 per day, with weekly allowance of $1.00 for Laundry. This applies to all sections of the Country excepting such localities where a higher rate of wages prevails. 465

Saturday Afternoon.

In case Saturday half holiday is granted during the months of June, July and August, if the shop men work on that afternoon in case of emergency, they are to be paid time and a half for doing so.

Apprentices

Apprentices are to be employed approximately

466 *Exhibits.*

at ratio of 1 Apprentice to 5 Journeymen Machinists, and between ages of 16 to 21 years, and shall serve a full term of four years.

Boys are taken one month on trial and if found satisfactory their Apprenticeship will be dated as beginning on the first day of the trial month, and they will be paid as follows:

For the first	six months	$3.00	per week
" "	second "	3.50	" "
" "	second year	5.00	" "
" "	third "	7.00	" "
" "	fourth "	9.00	" "

467 305 working days shall constitute a years work.

Upon the completion of the four years apprenticeship, those who remain in the employ of R. Hoe & Co. shall receive at least $2.25 per day and shall receive an advance of at least 25c per day every three months so that within one year they will receive at least the minimum rate paid Machinists at that time.

The Scott P. P. Co., Potter P. P. Co., both of Plainfield, N. J., the Hall P. P. Co., of Dunellen, N. J., The Goss P. P. Co., of Chicago, The Wesel Mfg. Co., of New York, with numerous others in this industry are now either working (8) hours per day or have provided for same beginning Jan.
468 1914, and at present working $8\frac{1}{4}$ hours per day.

In submitting the foregoing it is not intended to take advantage of any Employer, rather the purpose of equalizing conditions so that Employers may know and rely upon knowledge that all other employers in this industry are at least granting similar working conditions, thus giving each employer an opportunity to figure Labor on equal basis in their competitive market.

It is not the desire of Interested Associations to

resort to strikes, as the entire elimination of all conditions that would bring about dissensions is more conducive to the general welfare of all concerned, as strikes and kindred procedures should not be necessary to secure consent to working conditions to patently fair and equitable.

It's intended however that the Eight (8) hour day shall become effective in the Printing and Paper Making Industry.

There is no insistence of a signed Agreement, that is optional, but if a written Agreement for one year or more is desired by Employers, providing for inauguration of Eight (8) hour day, Apprenticeship System, Overtime and minimum Wage Rates 470
with provisions for Arbitrating difference that may arise, thereby preventing cessation of work, such can be brought about through Conference.

Trusting you will receive this in the spirit in which it is sent, and assuring you that we have every reason to believe that after an opportunity to meet in conference upon any point of apparent difference that a fair and free discussion of the same can result only in a satisfactory understanding. However, in this case, we have had numerous conferences within the past few years, without an understanding having been reached.

I have therefor been instructed by our Gen'l. Board of Directors to prepare for action. 471

Trusting to hear favorably from you or your Company relative to above at a very early date,

I am, Most Respectfully Yours

J. J. KEPPLER
Intl Vice Pres I. A. of M.
Room 602 Morton Bl'dg, #110-16 Nassau St
New York City

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Defendants' Exhibit A.

New Grand Central Palace, New York, A. S. P. A.
Week, April 19th to 26th, 1913

NATIONAL PRINTING AND ADVERTISING EXPOSITION

Showing the Modern Machinery and Processes for Printing, Typefounding, Linotyping, Monotyping, Electrotyping, Stereotyping, Lithographing, Engraving, Cutting, Folding, Binding, Duplicating, Addressing and Mailing; also Printers' and Lithographers' Inks, Papers, Supplies, Etc., and all Advertising and Circulation Methods

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Executive Offices in the
Fifth Avenue Building, New York

Telephone Gramercy 724

Harry A. Cochrane, President

ADVISORY COMMITTEES

PRINTING AND PRINTING MACHINERY

Norman Dodge, 2nd V. Pres., Mergenthaler Linotype Co.
L. A. Hornstein, Mgr., Pub. Dept., Mergenthaler Linotype Co.
F. D. Hutchins, Cost Installation Com., Typothetae of N. Y.
E. J. O'Hayer, Jr., V. Pres., Miehle Ptg. Press Mfg. Co.
H. L. Baker, Jr., Gen. Sales Mgr., C. B. Cottrell & Sons Co.
474 George R. Swart, V. Pres., Dexter Folder Co.
C. F. Ahlstrom, Pres., Whitlock Printing Press Mfg. Co.
J. W. Bothwell, Chairman Ex. Com., Typothetae of N. Y.
Edwin Flower, Pres., Electrotypers Board of Trade
Alfred J. LaVigne, Pres., Electrotypers Association
C. W. Dickinson, Gen. Sales Mgr., The Harris Automatic Press Co.
Edward Epstean, Sec., Int. Assoc. of Mfg. Photo Eng. & Chairman Bd. Dir. N. Y. P. E. League
Charles Francis, Pres., Printers League of Am.
John Clyde Oswald, Editor, American Printer
J. Sweeling, Editor, Printing Trade News

Paul Nathan, Standard Automatic High Speed Job Press
W. S. Winslow, Adv. Mgr., J. E. Linde Paper Co., N. Y.
W. M. Spear, Sec. & Treas., Ault & Wiborg Co. of N. Y.
Harry O. Latham, N. Y. Mgr., Latham Machinery Co.
L. M. Sloman, of the Inland Printer
Benjamin Wood, Gen'l Mgr., The Autoplate Co. of A.
William F. Loomis, Sec'y, Nat'l Machine Co., Hartford, Conn.
A. F. Mackay, Lanston Monotype Machine Co., Phila.
Ogden Brower, Jr., Gibbs, Brower Co., N. Y.
C. Frank Crawford, President, The New York, Master Printers' Association
W. B. Hait, Jr., Editor, The Master Printer, Philadelphia
W. S. Wilcox, Sec. Ticon. Pulp & Paper Co.

ADVERTISING

Elbert Hubbard, East Aurora, N. Y.
E. St. Elmo Lewis, Adv. Mgr., Burroughs Adding Machine Co., Detroit
George Nowland, Adv. Mgr., Fels-Naptha Soap Co.
Joseph H. Appel, Adv. Mgr., Wanamaker Stores
Gerald B. Wadsworth, Pres., E. Div. Ass'n Ad. Clubs of A.
William C. Freeman, Adv. Mgr., Evening Mail
A. C. Barrell, Pres., Representatives Club
F. E. Morrison, O. J. Gude Co.
David G. Evans, Curtis Publishing Co.
J. D. Kenyon, Vice-Pres. Sheldon School
Leroy Fairman, Editor, Advertising and Selling
Edward M. Carney, Adv. Dir. U. S. Worsted Co.
George C. Hubbs, Adv. Dir. U. S. Tire Co.
Samuel Brill, Brill Brothers
Dan A. Carroll, Special Newspaper Representative
H. W. Casler, Div. Adv. Mgr., N. Y. Telephone Co.
O. C. Harn, Mgr. Adv. Dept., National Lead Co.
David D. Lee, Publishers Representative
A. A. Christian, Adv. Director, Gimbel Bros., Phila.
R. Wentworth Floyd, Woman's World
H. K. McCann, Pres., H. K. McCann Co., Advertising
J. W. Adams, Mgr., Daily Newspaper Club
W. F. Hamblin, W. F. Hamblin Co., Advertising
George C. Sherman, Sherman & Bryan, Advertising
Percy I. Marcellus, The Kalkoff Co.
Harvey C. Wood, Mgr., The Reuben H. Donnelley Co.
Courtland Smith, Pres., American Press Association

A. W. Knapp, Sec. & Gen. Mgr., Business Man's Publishing Co., Detroit
Frank A. Stecher, Stecher Litho Co., Rochester
W. F. Powers, President, W. F. Powers Co., N. Y.
Horace Reed, Pres., Niagara Litho Co., Buffalo

ADVERTISING SPECIALTY COMMITTEE

H. B. Hardenburg, Pres., H. B. Hardenburg Co.
J. A. L. Moller, Sales Mgr., Palm Fechteler Co.
H. J. Joseph, Secretary, Parisian Novelty Co., Chicago
A. T. Fischer, Pres., International Sign Co., Cleveland
O. B. DuBois, Willis-DuBois Co., New York
Henry F. Hosley, The Novelty News, N. Y.
Arnold Binger, Pres., Master Sign Makers Ass'n of Gr. N. Y.
479 Henry S Bunting, Editor, Novelty News
Geo. S. Greenburg, Pres., Nat'l Ass'n of Adv. Novelty M'f'r's

TRADE UNIONS

Peter J. Brady, Sec., Allied Printing Trades Council and Pres., N. Y. Photo Engravers Union No. 1
Thomas J. Carroll, Pres., Allied Printing Trades Council and Pres. N. Y. Stereotypers Union No. 1
Charles Maxwell, Pres., Typographical Union (Big Six)
J. J. Keppler, V. Pres., Intern'l Assoc. of Machinists
Joseph Prout, Organizer, Bookbinders Union
W. F. Erhardt, Pres., N. Y. Pr'g Pressmans Union No. 51
Martin Appy, Pres. Electrotypers Union
Cornelius J. Daly, Pres., N. Y. Mailers Union No. 1
E. W. Edwards, Pres., Web Pressmans Union No. 25

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160½ It is Hereby Stipulated and Agreed that the foregoing is a true and complete statement of the evidence in the above entitled cause and may be approved and filed as such.

WALTER GORDON MERRITT,
Solicitor for Complainant, Appellant.
FRANK X. SULLIVAN,
Solicitor for Defendants, Appellees.

On the above stipulation the foregoing statement of the evidence is hereby approved and ordered on file.
Dated Aug. 31, 1917.

J. M. MAYER,
United States District Judge.

Opinion. 481

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

DUPLEX PRINTING PRESS COMPANY,
Complainant,
against
EMIL J. DEERING, *et al.*,
Defendants.
} =74.

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AUSTIN, MCLANAHAN & MERRITT, of New York City, Counsel for Complainant.

FRANK X. SULLIVAN and FRANK L. MULHOLLAND, of New York City, Counsel for Defendants.

MANTON, *D. J.*:

The complainant, a manufacturer of printing presses, has its principal place of business at Battle Creek, Michigan, and sells its product throughout the United States. The defendants are officers of the International Association of Machinists and are named as parties defendant individually, and in their representative capacities as business agents of the International Association of Machinists and the Riggers' Protective Union, in which they respectively held offices. They have appeared and answered as individuals and, it appears, process has not been served upon the associations of which they are the representatives. The relief sought is an injunction restraining and enjoining them from interfering with the complainant's trade and good will, and in preventing the complainant from securing skilled mechanics to carry on its business of pro-

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ducing, hauling and erecting printing presses for customers in New York State and other states, and in preventing the complainant from securing orders and contracts for the sale and installation of printing presses and from interfering with the sale, carting, installation, use or operation of printing presses made by the complainant, and to generally restrain the defendants from doing any and all acts whatsoever in furtherance of a combination or conspiracy charged in the complaint said to exist for the purpose of accomplishing the acts charged against the defendants. Relief is further asked,

485 "restraining the defendants from publishing, circulating or otherwise communicating, either directly or indirectly, in writing or orally, to any person or corporation any statement or notice of any kind or character whatsoever, calling attention to the fact that the complainant or its business or its products are or were or have been declared unfair or are on any unfair list, or that the complainant should not be patronized or dealt with or its printing presses purchased, used, handled, hauled, operated, worked upon, or dealt in because made in an open or non-union shop, and from publishing, circulating or communicating, either orally or in writing, any representation or statement
486 of like effect or import, in any manner that will injure or interfere with the complainant's business or with the free and unrestricted right of the complainant to dispose of its printing presses and to obtain contracts and orders for printing presses to be manufactured and installed by the complainant.

From giving notices verbally or in writing to any person, firm or corporation, to refrain from soliciting, making or carrying out con-

tracts with complainant for the purchase, carting, installation, operation, exhibition, advertisement or display of printing presses made by the complainant, or to refrain from purchasing, hauling, installing, using, handling and operating printing presses of any kind made by the complainant under threats that if such contracts or purchases are made and carried out, or such work is done, they will cause the person so notified loss, trouble or inconvenience, or that they will interfere with and prevent the complainant from carrying out said contracts, or that they will cause persons employed by others to do work in connection with 188
the said presses or upon buildings, or in connection with exhibitions where said presses are to be displayed, used or installed, to withdraw from work upon said building or in connection with said exhibitions, or that they will cause persons not to exhibit at said exhibition.

And from attempting to prevent the sale, carting, installation, use, operation, exhibition or display of printing presses manufactured by complainant, or the performance of contracts made by the complainant, by inducing or attempting to induce any person or persons whomsoever to decline employment or cease employment or not to seek employment under 189
any firms, persons or corporations or representatives of the complainant engaged in the work of hauling, carting, installing, handling, using or operating said printing presses for customers because the complainant does not observe union regulations in Battle Creek, Michigan.

And from preventing or attempting to prevent the complainant from exhibiting its said

presses at any exhibition or exposition, or advertising said presses, by threatening, any persons or corporations having charge of such exposition or advertising, or any person or corporation doing business with them, with labor difficulties or loss of patronage, if your complainant is allowed to exhibit or advertise, and from inducing any person employed by said exposition or advertising agency; or any person or corporation doing business with them, to cease employment or to decline employment or to remain out of employment of said exhibitors or exposition company as long as the complain-
491 ant is allowed to take part in said exhibition.

And from inducing any person or corporation not to do business with or work for any person or corporation because such person or corporation may have or purposes to have, or formerly had, business relations with complainant.

And from inciting or intentionally causing strikes or labor troubles among men employed by customers, representatives or agents of the complainant outside of Battle Creek, Michigan, where no grievances exist against the complainant or its agents or customers other than the alleged grievances that the complainant
492 does not operate its factory at Battle Creek, Michigan, in accordance with the rules and regulations prescribed by the International Association of Machinists or any of its officers or subdivisions.

And from threatening, intimidating or assaulting persons in the employ of your complainant, or those engaged in hauling, installing, using, handling or operating machinery manufactured by the complainant, and from

making misrepresentations or false statements concerning the labor conditions existing in the complainant's factory for the purpose of interfering with the complainant in securing skilled mechanics to enter or remain in its employ or in securing orders and contracts from customers for the sale, installation and use of printing presses.

And from using any and all ways, means and methods of doing any of the aforesaid forbidden acts and from doing any of the forbidden acts either directly or indirectly or through by-laws, orders, directions or suggestions to committees, associations, officers, agents or otherwise." 494

The complaint generally states that the defendants, individually and as officers of the respective labor unions, are attempting to carry on an illegal combination or conspiracy to monopolize the machinists trade throughout the United States and to compel employers to operate union shops (where no other than employees of labor unions are engaged) and that by so doing they are interfering with the complainant's business of producing, selling, and installing printing presses. In furtherance of this illegal combination or conspiracy, union men at work for the complainant have been withdrawn 495 from the work of installing or erecting the complainant's presses. Picketing has been resorted to, thus preventing the complainant from employing skilled machinists to take the place of men who have gone out on strike in the complainant's employ, and that misrepresentations and intimidations have been resorted to in furtherance of this plan or conspiracy. It is further alleged, that by circulation of circulars and other means of persuasion, the defendants have directly and indirectly and through

officers and their unions, prevented the hauling or carting and erecting of the printing presses manufactured by the complainant, and further, that the defendants have prevailed upon prospective customers from purchasing the complainant's printing presses, using in their effort threats to such customers, and with labor difficulties such as strikes, boycotts and misrepresentations, all of which it has alleged has interfered with the complainant's interstate trade or commerce, as a result of which, complainant has been damaged.

There was a strike at complainant's plant in August, 1913.

497 At the trial there was no dispute as to the three individual defendants representing the respective labor unions or associations, as claimed by the complainant.

There have been many cases before the courts involving for decision the rights claimed by the complainants here. The complainant, following the reasoning of Judge Killits in *Stephens* v. *The Ohio State Telephone Company*, decided in February, 1917, in the Northern District of Ohio, urges now that the Sherman Anti-Trust Act as amended by Congress on October 15, 1914, is but an enunciation of the then existing law, as to the right of injunction against labor unions, as laid down in the many

498 cases. The sections of the Clayton Act having to do with this subject, are as follows:

> "U. 323, Sec. 6. The labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain in-

dividual members of such organization from lawfully carrying out the legitimate objects thereof; nor shall such organizations or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

"U. 323, Sec. 20. No restraining order or injunction shall be granted by any Court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application which must be in writing and sworn to by the applicant or by his agent or attorney. 500

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any persons engaged in such dispute any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party 501

thereto; nor shall any of the acts specified in this paragraph be considered or held to be in violation of any law of the United States."

In the above case, Judge Killits, after quoting the above Section 20, says:

"It is well to note, and not to lose sight of, the fact that the words 'lawfully,' 'peacefully,' 'lawful,' 'peaceful,' dominate the thought of the second paragraph of the section in question, they control its meaning and they control both the court and the parties to a labor con-
503 troversy. The statute but enacts the position which courts have universally taken; there is nothing new in it, for we hold that no case exists where a court has attempted jurisdiction to control lawful and peaceable action by injunction, although it may seem that sometimes judgment may have been faulty as to what particular action was 'unlawful' or provocative of a disturbed peace."

And further this test:

"What constitutes peaceful picketing may be answered by any fair-minded man if this question is asked, 'Would this be lawful if no strike
504 existed?' "

Whatever may have been the reasoning and final determination of the many cases which have been cited by learned counsel for the complainant in a carefully prepared and exhaustive brief on this subject, I am of the opinion that we must now confine our search for light on this subject to the provisions of the Clayton Act, since the provisions of this act are in force and effect and are constitutional.

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Under Section 20 of the Clayton Act, I cannot grant a restraining order or injunction to the complainant unless it be necessary to prevent irreparable injury to property or to a property right of the complainant and for which injury there is no adequate remedy at law. No such restraining order or injunction is permitted which shall prohibit any person or persons from terminating the relation of employment or from ceasing to perform work or labor or recommending, advising or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peacefully assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto.

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Upon the trial, the defendants offered no proof. The case, therefore, rests upon the testimony offered by the complainant.

The defendants take the position that their object was a lawful one, to wit, to secure for the mechanics of this union an eight-hour day at a minimum scale of wages.

It appears that at the complainant's plant in Battle Creek, Michigan, some union machinists were employed as well as non-union men. In other words, the complainant was running an "open shop." Deering and Neyland, representing the defendants, approached Mr. Stone, chairman of the board of directors of the complainant, and in very friendly attitude and man-fashion, urged him at several interviews to accede to the desires of the union, namely, to establish an eight-hour day at a a minimum scale of wages. Mr. Stone describes these meetings as friendly, no threats were made

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use of, but Mr. Stone, for reasons sufficient for himself, refused to accede to their wishes. I can find nothing in the testimony of Mr. Stone which would indicate any unlawful acts, or, indeed, any ungentlemanly acts, that might be complained of so far as the means employed by the defendants in trying to persuade him were concerned. Some reports and minutes of the meetings of the union at which there was a discussion as to the complainant's strike in August, 1913, and attitude on the eight-hour day were published in labor magazines and were offered in evidence. The happenings at
509 these meetings seem to indicate that the International Association of Machinists was endeavoring to improve the condition of its members both in respect to the hours of labor and of wages paid, and disclosed that a general plan for this purpose was under discussion.

The complainant called its employees, Messrs. Young, Burkle, Deering and Squire, all of whom had something to do with the erection of the presses which were manufactured, sold and erected by the complainant. On several occasions during the progress of this work, Deering called upon these men and engaged them in conversation, seeking to persuade them not to work, and to stand with the union, but I can find no threats or ill-advised lan-
510 guage or offensive or degrading speech which would in any way provoke a breach of the peace in resentment. There is some statement made by Mr. Young that Deering stated to him that he had reason "to be afraid if he only knew it," and that if he did not cease working his union card would be taken away, but under the by-laws of the union of which he was a member, the union had the right to take away a card of membership where a member was found working with non-union employees where

a strike was in progress. There is evidence that Young was assaulted while going from his work. However, there is no evidence which connects Deering or the other defendants with this assault. If the assault was committed by one of the defendants, it would be a crime and I cannot, without proof thereof, reach the conclusion by other than competent evidence of the defendant's connection with the commission thereof.

Britton, a cartman, testified that while making deliveries of the presses in New York, his men handling the machinery were requested by Mr. Deering to stop work, which they did, but the men employed were members of the Machinists' Helpers 512
Union. This withdrawing of workmen was obtained through peaceful persuasion. There is no authority which holds that peaceful persuasion resulting in employees withdrawing their services is unlawful.

Mr. Cosgrove, connected with the *New York Law Journal*, and Mr. Zucca, of the *Italian Herald*, were informed by Deering that non-union men were engage in installing the presses and that since each employed union pressmen, they would have considerable trouble. It does not appear that any trouble resulted from this conversation nor that any injury resulted to either of the gentlemen. I can see nothing wrong in this conduct.

Harry A. Cochrane, who was in charge of an ex- 513
hibition of the American Newspaper Publishers' Association at the Grand Central Palace, was approached by Deering, asked if he was going to employ union labor and said that he was. Deering then informed him that if non-union machinists were employed in any part of the exposition that the union machinists would withdraw their services; he told him of the strike at the Duplex plant at Battle Creek and that non-union machinists

would not handle their product in New York. Cochrane tried to persuade Deering otherwise. There was no violence of any kind; Cochrane insisted upon his right to employ non-union men as well as union men. I can find nothing in this conduct which is objectionable.

Indeed, a careful reading of the entire record leads to the conclusion that if men have a right to strike and to endeavor to prevail upon others to fail to work for the employer, this is such a case as exemplifies careful, prudent and lawful conduct on the part of the employees.

515 There is nothing in this record which warrants my granting the injunction sought.

Testing the record here by the rule that prevailed in this Circuit prior to the Clayton Act, the complainant cannot succeed. In *Gill Engraving Co.* v. *Doerr* (214 Fed., 111), Judge Hough said:

> "I do not perceive any distinction upon which a legal difference of treatment should be based between a lockout, a strike and a boycott. They often look very unlike, but this litigation illustrates their basic identity. All are voluntarily abstentions from acts which normal persons usually perform for mutual benefit; in all the reasons for said abstention is a determination to conquer and attain desire by proving
> 516 that the endurance of the attack will outlast the resistance of the defense; and for all the law of New York provides the same test, namely, to inquire into the legality (1) of the object in view, and (2) of the means of attainment."

In *National Fireproofing Company* v. *Masons Builders Association* (169 Fed., 263), it was held:

> "Laborers may combine for mutual advantage, and as long as the motive is not ma-

licious, the object not unlawful or oppressive, and the means neither deceitful nor fraudulent, the result is not a conspiracy, although it may necessarily work injury to others."

A peaceful and orderly strike, not to harm others but to improve conditions, has never been held to be a violation of the law. The object here to establish an eight-hour day with a minimum scale of wages in this particular industry was a lawful purpose, and unless something was done in violation of the law, the complainant cannot be heard to complain. The language of Judge Hough in the *Gill Engraving Co. v. Doerr* case (*supra*) is appropriate 518
here.

"What motive incited defendants to injure Gill Company? None, except that it hinders the expansion and aggrandizement of the union, and therefore gives rise to the same kind of objection that the soldier has to the man who prevents his onward march. It can rarely be said that the soldier is moved by a desire to kill his opponent, but he will kill him if necessary. * * *

In the United States courts for this circuit, *National Fireproofing Co. v. Mason Builders Association*, 168 Fed., 259; 94 C. C. A. 535; 26 L. R. A. (N. S.), 148, is controlling. It 519
accepts the New York cases fully, piously regrets the injuries committed, and writes the epitaph of litigation such as this by declaring that, when equal legal rights clash, equity is helpless. This is true; it would have been just as true to point out that the result of legalizing strikes, lockouts, and boycotts under any circumstances must be that those who understand the use of such legal tools can always keep within the law and accomplish their main

purpose while inflicting all necessary 'incidental' injury."

In *Iron Holders' Union, 125 Milwaukee*, v. *Allis-Chalmers Co.* (166 Fed., 45), this rule was laid down:

"The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment. Under the name of persuasion, duress may be
521 used; but it is duress, not persuasion, that should be restrained and punished. In the guise of picketing strikers may obstruct and annoy the new men, and by insult and menacing attitude intimidate them as effectually as by physical assault. But from the evidence it can always be determined whether the efforts of the pickets are limited to getting into communication with the new men for the purpose of presenting arguments and appeals to their free judgments. Prohibitions of persuasion and picketing, as such, should not be included in the decree."

From the above quotations, it is apparent that the
522 right to strike for higher wages and to improve conditions of labor have been firmly established and recognized by the Federal Courts. The object of this strike, as stated before, was a lawful one and an examination of this record indicates that it was carried on for no deliberate purpose to interfere with complainant's conduct of its business nor to injure or destroy its business or property. The purpose being lawful if lawful means are used to effectuate it, such means cannot be made to reach

back and taint the purpose itself with unlawfulness and thus render unlawful all the acts in its furtherance. In pursuit of a lawful purpose to secure a raise in wages, picketing may be employed to ascertain where the late employer has persuaded, or attempted to persuade, to accept employment, and persuasion may be used to induce them to refuse or quit employment. (*Tri-City Cent. T. Council v. American Steel Foundries*, 238 Fed., 732.)

Even though picketing and persuasion might interfere with the complainant's conduct of its business and make it harder to retain old employees and to hire and keep new ones, it would not warrant the granting of an injunction. As was said 524
in Tri-City Cent. T. Council v. American Steel Foundries (*supra*):

> "Indeed, the very act of striking often seriously interferes with that 'free and unrestrained control and operation of the employer's business' which the plaintiff here alleges as an object of the conspiracy charged; but the lawfulness or unlawfulness of the strike is not to be tested by such incidental effect of it. And so it is with persuasion and picketing, properly carried on in the interest of a lawful strike. The laborer may be strictly within his rights, although he obstructs 'the free and unrestrained control and operation of the employer's business.' 525
> The right to strike must carry with it by implication the right to interfere with the employer's business to a certain extent. The right to persuade prospective employees by legitimate argument must of necessity interfere with the employer's business. Where labor is essential to the successful conduct of a business, any interference with that labor is an interference with the employer's

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business. But whether the interference with the business is lawful or unlawful depends upon the facts in each case."

Applying the foregoing principles to the evidence in the case at bar forbids the granting of a decree to the complainant and accordingly a decree must be entered herein dismissing the bill with costs.

Dated, April 23rd, 1917.

527 *U. S. D. J.*

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Final Decree.

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At a Stated Term of the United States District Court, held in and for the Southern District of New York, at the County Court House thereof, in the Post Office Building, on the 8th day of May, 1917.

Present:
Honorable MARTIN T. MANTON,
Judge.

DUPLEX PRINTING PRESS COMPANY,
Complainant,

530

against

EMIL J. DEERING and WILLIAM BRAMLEY, individually and as business agents of District No. 15 of the International Association of Machinists; MICHAEL T. NEYLAND, individually and as business agent of Local Lodge No. 328 of the International Association of Machinists, and EDWARD F. NIELSEN, individually and as business agent of Riggers' Protective Union; JACOB J. KEPPLER, individually and as Vice-President of the International Association of Machinists,
Defendants.

In Equity,
No. 11-166.
Final Decree.

531

This cause came on to be heard at this Term and was argued by counsel and thereupon, upon consideration thereof, it was ordered, adjudged and

532 *Final Decree.*
Petition for Appeal.

decree as follows:, viz.: That the complaint herein be, and the same hereby is, dismissed, and that the defendants recover of the complainant one hundred and eighteen and 15 100 ($118.15) dollars, their costs, as taxed, and that the preliminary injunction heretofore issued herein be, and the same hereby is, vacated.

Dated, New York City, Southern District of New York, May 8th, 1917.

MANTON,
U. S. District Judge.

533 Approved as to form:
WALTER GORDON MERRITT,
(Solicitor for Complainant.)

(Endorsed: Filed U. S. District Court, S. D. of N. Y., May 8, 1917.)

Petition for Appeal.

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

DUPLEX PRINTING PRESS COMPANY,
Complainant,
534
against
EMIL J. DEERING *et als.*,
Defendants.

The complainant herein, Duplex Printing Press Company, feeling aggrieved by the decree of dismissal made and entered on the 8th day of May, 1917, whereby it was adjudged and decreed that

535

complainant's bill of complaint be dismissed, with costs to the defendants to be taxed,

Now comes, by its solicitor, Walter Gordon Merritt, and petitions this Honorable Court for an order allowing said complainant to prosecute an appeal to the Honorable United States Circuit Court of Appeals for the Second Circuit, under and according to the laws of Congress and the statutes of the United States in such case made and provided.

And your petitioner also prays for an order fixing the amount of security which the complainant shall give and furnish upon such appeal, and that upon the giving of such security all further proceedings of this Court be suspended and stayed until the determination of this appeal.

536

And your petitioner will ever pray, etc.

Dated, this 17th day of May, 1917.

WALTER GORDON MERRITT,
Solicitor for Complainant.

(Endorsed: Filed U. S. District Court, S. D. of N. Y., May 18, 1917.)

537

538 **Assignment of Errors.**

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

DUPLEX PRINTING PRESS COMPANY,
Complainant,

against

EMIL J. DEERING *et als.*,
Defendants.

539

Now comes complainant, Duplex Printing Press Company, by Walter Gordon Merritt, of counsel, and having prayed an appeal to the United States Circuit Court of Appeals for the Second Circuit from the final decree made by this Honorable Court on the 8th day of May, 1917, dismissing the bill of complaint, with costs to the defendants, does respectfully file as its assignment of errors upon which it will rely upon said appeal the following:

1. The said District Court erred in dismissing the complainant's bill and entering said final decree in favor of the defendants for their costs against the complainant.

540

2. The said Court erred in refusing to grant an injunction in behalf of the complainant, as prayed for in the bill of complaint.

3. The said Court erred in not holding that the combination violated the act of Congress of July 2, 1890, entitled an "act to protect trade and commerce against unlawful restraints and monopolies."

4. The said Court erred in not holding that the complainant is entitled to an injunction under the act of Congress, approved October 15, 1914, entitled: "An Act to supplement existing laws against unlawful restraints and monopolies and for other unlawful purposes."

5. The said Court erred in not holding that the combination of the defendants violates subdivision 6 of Section 580 of Article LIV of the Penal Law of the State of New York, forbidding conspiracies "to commit any act injurious to trade or commerce," and that the complainant is entitled to protection therefrom. 542

6. The said Court erred in not holding that the combination of the defendants violates sections 340-341 of Article XXII of the General Business Law of the State of New York, and that complainant being irreparably injured in its property rights by such unlawful acts is entitled to an injunction and damages.

7. The said Court erred in not holding that the combination of the defendants violates subdivision 5 of Section 580 of the Penal Law of the State of New York.

8. The said Court erred in not holding that the defendants are engaged in a combination and conspiracy to injure the complainant's good will, trade and business, and that such a combination is unlawful at common law. 543

9. The said Court erred in not holding that the combination of the defendants violates Section 530 of Article XLVIII of the Penal Law of the State of New York.

10. The said Court erred in not holding that the combination of the defendants unlawfully seeks to

544 *Assignment of Errors.*

prevent truckmen who are common carriers from performing their common law duty of serving those who purchase complainant's presses.

11. The said Court erred in not holding that the combination of the defendants unlawfully seeks to induce the complainant's customers to violate their contracts with the complainant.

12. The said Court erred in not holding that the combination of the defendants seeks to bring about the exclusive employment of union machinists throughout the entire City of New York and, in fact, throughout the entire country, and, therefore, seeks an unlawful monopoly.

545

13. The said Court erred in not granting the complainant such other and further relief as the circumstances of the case might require.

WHEREFORE, complainant prays that said decree be reversed, and that directions be given to grant the complainant all the relief prayed for in the bill of complaint.

WALTER GORDON MERRITT,
Solicitor for Complainant-Appellant.

(Endorsed: Filed U. S. District Court, S. D. of
546 N. Y., May 18, 1917.)

Order Allowing Appeal and Fixing Bond.

547

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

DUPLEX PRINTING PRESS COMPANY,
Complainant,

against

EMIL J. DEERING *et als.*,
Defendants.

548

On motion of Walter Gordon Merritt, solicitor and counsel for the Complainant, it is

ORDERED, that an appeal to the United States Circuit Court of Appeals for the Second Circuit from the final decree heretofore filed and entered herein be, and the same hereby is, allowed, and that a certified transcript of the record, testimony, exhibits and of all proceedings herein be forthwith transmitted to the said United States Circuit Court of Appeals; and it is further

ORDERED, that the bond on appeal be fixed at the sum of Two hundred and fifty ($250.00) dollars, the same to act as a supersedeas bond and also as a bond for costs on appeal.

549

Dated, the 18th day of May, 1917.

AUGUSTUS M. HAND,
United States District Judge.

(Endorsed: Filed U. S. District Court, S. D. of N. Y., May 18, 1917.)

550

Bond.

DISTRICT COURT

OF THE UNITED STATES OF AMERICA,

FOR THE SOUTHERN DISTRICT OF NEW YORK,

IN THE SECOND CIRCUIT.

DUPLEX PRINTING PRESS COMPANY, Appellant, against EMIL J. DEERING *et als.*, Appellees.	Bond on Appeal.

551

KNOW ALL MEN BY THESE PRESENTS, That Duplex Printing Press Company, as principal, and National Surety Company, a corporation under the laws of the State of New York, with its principal place of business at No. 115 Broadway, in the City, County and State of New York, as surety, are held and firmly bound unto the above-named Emil J. Deering *et al.* in the sum of Two Hundred and Fifty ($250.00) Dollars, to be paid to the said Emil J. Deering *et al.*, for the payment of which well and truly to be made said principal and surety bind themselves, their heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed and dated the 19th day of May, 1917.

552

WHEREAS, the above-named Duplex Printing Press Company has prosecuted a writ of error to the United States Circuit Court of Appeals for the Second Circuit to reverse the decree rendered

in the above-entitled suit, by a Judge of the District Court of the United States for the Southern District of New York;

NOW, THEREFORE, the condition of this obligation is such that if the above-named Duplex Printing Press Company shall prosecute said writ to effect, and answer all damages and costs if it fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

NATIONAL SURETY COMPANY.
By WM. A. THOMPSON, 554
Resident Vice-President.

Attest:
E. M. MCCARTHY,
Resident Assistant Secretary.

AFFIDAVIT, ACKNOWLEDGMENT AND JUSTIFICATION BY GUARANTEE OR SURETY COMPANY.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this 19th day of May, 1917, before me personally came WM. A. THOMPSON, known to me to 555
be the resident Vice-President of National Surety Company, the corporation described in and which executed the foregoing Bond of Duplex Printing Press Company as surety, and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said National Surety Company is duly incorporated

under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13, 1894; that the seal affixed to the within Bond of Duplex Printing Press Company is the corporate seal of said National Surety Company, and was thereto affixed by authority of the Board of Directors of said Company, and that he signed his name thereto by like authority as Resident Vice-President of said Company, and that he is acquainted E. M. McCarthy, and knows him to be the Resident Assistant Secretary of said Company, and that the signature of
557 said E. M. McCarthy subscribed to said Bond is in the genuine handwriting of said with E. M. McCarthy, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent, and that the assets of said Company, unencumbered and liable to execution, exceed its debts and liabilities of every nature whatsoever by more than the sum of Nine Million dollars.

WM. A. THOMPSON.
(Deponent's Signature.)

Signed, sworn to and acknowledged
before me this 19th day of May, 1917.

F. E. FIELDS,
558 Comm. of Deeds.

(Endorsed: Filed U. S. District Court, S. D. of N. Y., May 28, 1917.)

Citation.

559

By the Hon. Augustus M. Hand, one of the judges of the United States District Court for the Southern District of New York, in the Second Circuit, to Emil J. Deering and William Bramley, individually and as Business Agents of District No. 15 of the International Association of Machinists; Michael T. Neyland, individually and as Business Agent of Local Lodge No. 328 of the International Association of Machinists; Edward F. Nielsen, individually and as Business Agent of Riggers' Protective Union; Jacob J. Keppler, individually and as Vice-President of the International Association of Machinists, GREETING:

560

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, on the 16th day of June, 1917, pursuant to an order allowing an appeal filed in the Clerk's office of the District Court of United States for the Southern District of New York, wherein Duplex Printing Press Company is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant as in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

561

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 18th day of May, in the year of our Lord one thousand nine hundred and seventeen, and of the In-

562 *Citation.*

dependence of the United States the one hundred and forty-first.

AUGUSTUS M. HAND,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

Received May 19, 1917.
FRANK X. SULLIVAN,
Solicitor for Appellees.

563 (Endorsed: Filed U. S. District Court, S. D. of N. Y., May 26, 1917.)

564

Stipulation.

565

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

DUPLEX PRINTING PRESS COMPANY,
Complainant,

against

EMIL J. DEERING *et al.*,
Defendants.

566

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties, that the same may be filed on or before September 1st, 1917, and that the Clerk may so certify.

Dated, New York, August 20th, 1917.

WALTER GORDON MERRITT,
Solicitor for Complainant.

FRANK X. SULLIVAN,
Solicitor for Defendants.

567

568 **Certification.**

UNITED STATES OF AMERICA,
SOUTHERN DISTICT OF NEW YORK, } ss.:

DUPLEX PRINTING PRESS COMPANY,
Complainant,

against

EMIL J. DEERING *et al.*,
Defendants.

569 I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter, as agreed on by the parties.

In testimony whereof I have caused the seal of the said Court to be hereunto affixed at the City of New York, in the Southern District of New York, this 2 day of [illegible] in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States of America the one hundred and forty-[illegible].

570 ALEXANDER GILCHRIST, JR.,
Clerk.

191 United States Circuit Court of Appeals for the Second Circuit, October Term, 1917.

No. 120.

Argued December 13, 1917; Decided May 25, 1918.

DUPLEX PRINTING PRESS COMPANY, Complainant-Appellant,

v.

EMIL J. DEERING et al., Defendants-Appellees.

Appeal from the District Court of the United States for the Southern District of New York.

Before Rogers and Hough, Circuit Judges, and Learned Hand, District Judge.

Daniel Davenport, Walter Gordon Merritt, Solicitors for Appellant.
Austin, McLanahan & Merritt, of Counsel.
Frank X. Sullivan, Solicitor for Appellees.

This cause comes here on appeal from the United States District Court for the Southern District of New York.

192 Complainant is a corporation organized and existing under the laws of the State of Michigan. It is engaged in the business of manufacturing printing presses at its factory in Battle Creek, Michigan. It has always maintained the open shop policy, both in connection with its factory in Battle Creek and in supervising elsewhere the erection of its presses. When it is fully occupied it operates ten hours a day, although in the winter it usually runs eight hours a day. Its presses are sold throughout the United States and even in foreign countries. Special emphasis is placed by it on its manufacture of presses for metropolitan newspapers which vary in weight from 10,000 pounds to 100,000 pounds and which require from one to four railroad cars to transport them, and many dray loads to cart them to and from the freight yards. It is said that these presses are of a peculiar manufacture and are made under special patents with the result that the ordinary mechanic or pressman is not competent to erect or operate them except under supervision and instruction of some one usually employed by the complainant who is familiar with their structure and operation.

The defendants are officers and members of the International Association of Machinists. This Association is divided into "districts" of which District Council, No. 15, in New York City is one. Two of the defendants, Emil J. Deering and William Brantley are Business Agents of District Council No. 15. Michael T. Neyland is Business Agent of what is known as Local Lodge No. 328 of the In-

ternational Association of Machinists, existing and carrying on business solely within the City and State of New York. No jurisdiction was obtained over these unincorporated associations as they were not served in the manner required by the statute. Deering, Bramley and Neylan are members of the International Association of Machinists.

It is alleged that the International Association of Machinists is an unincorporated association of journeymen machinists with a membership of over 60,000 and has affiliated therewith local unions and lodges in different States and territories of the United States,
193 which are also unincorporated associations, and that each member of any local lodge is by virtue thereof a member of the International Association. District No. 15 of said International Association is one of the Association's subdivisions and has its principal office in New York City.

It is alleged that the Riggers' Protective Union is an unincorporated association of workingmen engaged in handling, hauling and erecting machinery, etc., and has jurisdiction over all union men in New York City engaged in that business. It is alleged by complainant, although denied by defendants in their answer, that nearly all of the skilled machinists in New York City are members of the International Association of Machinists, and that nearly all of the riggers in New York City are members of the Riggers' Protective Union, and that the said union machinists and riggers are affiliated with another unincorporated association known as the Building Trades Council of New York City, and that said Building Trades Council is composed of the various unions in New York City whose members are engaged in the building business, and includes in its membership the unions of some thirty different trades with an aggregate membership of from 75,000 to 100,000 members, and that by virtue of the agreements and understanding existing between each of said unions no member thereof is allowed to work on or in connection with any building where any non-union man is employed, and said Building Trades Council is authorized to call strikes of all trades employed on or in connection with any building in the event that any non-union man is employed in any of said trades, and that by reason of said rules and regulations and the affiliation of said thirty unions through the Building Trades Council it is practically impossible to erect any building in the Borough of Manhattan where any non-union man is employed in any of said trades.

The complainant states that it is informed and believes that the entire machinery of the Building Trades Council will be put into operation and effect against it in order to prevent it from exhibiting or displaying its presses at the exposition conducted by the National Exposition Company, Inc., as hereinafter set forth, unless a
194 restraining order be issued as prayed.

The complainant states on information and belief that for many years past the International Association of Machinists and the local branches thereof and the members and officers of said Association and its branches, have been engaged in a combination and con-

piracy to monopolize the machinists' trade throughout the United States and to prevent the employment of any machinist who is not a member of said International Association, and that they have adopted various means and devices to prevent any employer procuring or retaining the necessary skilled organization for the production or installation of printing presses or the necessary customers for the sale thereof unless said employers operate a closed or union shop and refuse employment to any machinist who is not a member of said International Association of Machinists, and that said conspirators have been so far successful in carrying out their said combination; that practically all manufacturers of printing presses of the kind and character manufactured by the complainant with the exception of the complainant have been compelled to comply with the demands of said conspirators and to refuse employment to any person who is not a member of said International Association, and that for a number of years past the said conspirators have further combined and conspired together to attain their said monopolistic and unlawful ends by restraining, injuring and destroying the complainant's interstate trade, business and good will, and interfering with the sale, carting and installation of the complainant's printing presses in New York State and the different States of the United States for the purpose of destroying its interstate trade, contrary to the statutes of the United States and the State of New York in such cases made and provided and contrary to the common law, because the complainant operates an open shop, and that all of the acts and doings of the said conspirators as described were done in furtherance of said conspiracy, and that if said conspirators are successful in destroying the complainant's business because it is unwilling to become a member of said combination such monopoly will have become
195 complete and no person will be able to secure employment in connection with the manufacture of printing presses of the kind manufactured by the complainant except with the consent of the said International Association of Machinists.

It is alleged that in the month of August, 1913, a strike was called in complainant's factory by the defendants, or those acting in conjunction with them, in furtherance of said conspiracy, and twelve or fourteen men quit work under orders of the union without presenting any grievances or demands or giving any notice, and that all of said men who quit work were members of said International Association of Machinists, and that immediately after said strike took place, and with like purpose and intent, said confederates placed pickets around said factory, to prevent the complainant from securing skilled machinists to take the place of those who had gone out on strike, and complainant is informed and believes that they have ever since persistently endeavored to induce other skilled machinists working for it at Battle Creek or in connection with the installation of its presses in different parts of the country to quit work, and have employed falsehoods, misrepresentations, threats, intimidation and personal violence to induce employees of complainant to quit work and to prevent other mechanics entering the employment of complainant and has thereby been caused great and irreparable injury.

It is also alleged on information and belief that the said corporators have published and widely distributed letters and circulars among, and have made oral communications to unions and teamsters, machinists and pressmen and their officers and members, and also to other kinds of mechanics or journeymen who do, or might have occasion to do, the work of hauling, handling, erecting or operating printing presses, to the effect that complainant is unfair, and that no mechanics or craftsmen of any class could or should haul, handle, install or operate printing presses produced by complainant, [196] and that all machinists are forbidden to handle, erect or operate such presses, and that the object and effect of said circulars has been to incite union officers in all parts of the United States to induce, prevent and forbid all members not to haul, handle, erect or operate such presses and to thereby cause loss and damage to any person or corporation purchasing complainant's presses, and to deter said persons and corporations from doing business with complainant for fear of labor difficulties, and the complainant has been thereby caused irreparable loss and damage.

It is also alleged on information and belief that said corporators endeavored to prevent customers and those who might become customers of complainant from placing contracts with or purchasing printing presses from complainant and they have threatened said customers with labor difficulties which would injure their said business if they patronized complainant and they have made misrepresentations to complainant's customers and those who might become customers as to the labor conditions prevailing in its factory, and have made statements to the effect that organized labor would prevent complainant from installing said presses, and all of said statements have been made for the purpose of interfering with the complainant's interstate commerce trade and good will and preventing it from securing orders and contracts in states outside of the State of Michigan, in order thereby to carry out the purposes of said conspiracy, and they have systematically ordered and caused strikes of mechanics and laborers employed by complainant and its customers in different States of the United States in connection with the hauling, erecting and installation of presses manufactured by complainant, and they have thereby harassed, delayed and damaged complainant and its customers for the sole purpose of destroying complainant's interstate trade and business and compelling it to operate a union shop at Battle Creek.

The complainant claims that over 80 per cent of its sales are made to customers outside of the State of Michigan through the channels of interstate commerce. It also declares that most [197] of its product is sold through salesmen in different States of the Union who solicit orders and contracts from customers and forward them to complainant's office in Battle Creek for acceptance.

It is also alleged that on account of the aforesaid combination and conspiracy and the acts performed in furtherance thereof the complainant has already suffered great loss and damage in its good will, trade and business, and is suffering a continuing injury and

has no adequate remedy at law, because much of its said damage is incapable of definite proof for recovery in law and because it would be necessary for the complainant to bring a multiplicity of suits against the great number of persons engaged in said conspiracy, and because many of said defendants are insolvent and would be unable to respond in damages, and because it is impossible for the complainant to ascertain the full extent to which its good will, trade and business has been injured and the name of each newspaper which has been deterred from placing contracts and orders with it by reason of the general rumors inspired by the defendants for the purpose of frightening away any newspaper which might patronize its presses.

The complaint contains other allegations not necessary to incorporate herein.

The relief prayed for is as follows:

"1. That the defendants Emil J. Deering and William Bramley, individually and as business agents of District No. 15 of the International Association of Machinists; Michael T. Neyland, individually and as business agent of Local Lodge No. 328 of the International Association of Machinists, and Edward F. Nielsen individually and as business agent of Riggers' Protective Union; Jacob J. Keppler, individually and as vice-president of the International Association of Machinists, their and each of their agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them or any of them, or under their authority, suggestion
198 or direction, be restrained and enjoined from combining and conspiring together to monopolize the machinist trade, and from combining and conspiring together to prevent the employment of nonunion machinists, and from combining and conspiring together to injure the complainant's business, trade and good will, and to prevent the complainant from securing skilled mechanics to carry on its said work of producing, hauling and erecting printing presses for customers in New York State and other States outside of Michigan, and to prevent the complainant from securing orders and contracts for the sale and installation of printing presses, and from interfering with the sale, carting, installation, use or operation of printing presses made by the complainant, and from doing any and all acts whatsoever in furtherance of said combination and conspiracy to accomplish any of the aforesaid purposes and more particularly from doing any of the following acts in furtherance of said conspiracy:

"From publishing, circulating or otherwise communicating, either directly or indirectly in writing or orally, to any person or corporation, any statement or notice of any kind or character whatsoever calling attention to the fact that your complainant or its business or its products are or were or have been declared unfair or are on any unfair list, or that your complainant should not be patronized or dealt with or its printing presses purchased, used, handled, hauled, operated, worked upon or dealt in because made in an open or nonunion shop, and from publishing, circulating or communicating, either orally or in writing, any representation or statement of like effect or import, in any manner that will injure or interfere with the complainant's business or with the free and unrestricted right of the

complainant to dispose of its printing presses and to obtain contracts and orders for printing presses to be manufactured and installed by the complainant.

"From giving notice verbally or in writing to any person,
199 firm or corporation to refrain from soliciting, making or carrying out contracts with complainant for the purchase, carting installation, operation, exhibition, advertisement or display of printing presses made by the complainant under threats that if such contracts or purchases are made or carried out, or such work is done, they will cause the person so notified loss, trouble or inconvenience, or that they will interfere with and prevent the complainant from carrying out said contracts, or that they will cause persons employed by others to do work in connection with said presses or upon buildings or in connection with exhibitions where said presses are to be displayed, used or installed to withdraw from work upon said building or in connection with said exhibitions, or that they will cause persons not to exhibit at said exhibition.

"And from attempting to prevent the sale, carting, installation, use, operation, exhibition or display of printing presses manufactured by complainant, or the performance of contracts made by the complainant, by inducing or attempting to induce any person whomsoever to decline employment or not to seek employment under any persons, firms or corporations or representatives of the complainant engaged in the work of hauling, carting, installing, handling, using or operating said printing presses for customers because the complainant does not observe union regulations in Battle Creek, Michigan.

"And from preventing or attempting to prevent the complainant from exhibiting its said presses at any exhibition or exposition, or advertising said presses, by threatening any persons or corporations having charge of such exposition or advertising, or any person or corporation doing business with them, with labor difficulties or loss of patronage, if your orator is allowed to exhibit or advertise, and from inducing any person or persons employed by said exposition company or advertising agency, or any person or corporation doing
business with them, to cease employment or to decline em-
200 ployment or to remain out of employment of said exhibitors or exposition company as long as your complainant is allowed to take part in said exhibition.

"And from inducing any person or corporation not to do business with or work for any person or corporation because such person or corporation may have or purposes to have, or formerly had, business relations with complainant.

"And from inciting or intentionally causing strikes or labor troubles among men employed by customers, representatives or agents of your complainant outside of Battle Creek, Michigan, where no grievances exist against the complainant or its agents or customers other than the alleged grievance that the complainant does not operate its factory at Battle Creek, Michigan, in accordance with the rules and regulations prescribed by the International Association of Machinists or any of its officers or subdivisions.

"And from threatening, intimidating or assaulting persons in the employ of your complainant, or those engaged in hauling, installing, using, handling or operating machinery manufactured by your complainant, and from making misrepresentations or false statements concerning the labor conditions existing in the complainant's factory for the purpose of interfering with the complainant in securing skilled mechanics to enter or remain in its employ or in securing orders and contracts from customers for the sale, installation and use of printing presses.

"And from using any and all ways, means and methods of doing any of the aforesaid forbidden acts, and from doing any of the forbidden acts either directly or indirectly or through by-laws, orders, directions or suggestions to committees, associations, officers, agents or otherwise."

ROGERS, *Circuit Judge*. (After stating the above facts):

I am unable to concur with my associates in the conclusion at which they have arrived, and which will appear in the
201 opinion of Judge Hough which follows. I shall, however, state the facts involved and my opinion as to the law applicable to the facts as I understand them.

The complainant is a manufacturer of printing presses. It employs 250 machinists in its factories in Michigan, and some 50 additional employees as travelling salesmen and as expert machinists in supervising the work of installing the presses in the places of business of the various purchasers of its machines. In carrying on its business it has always operated an "open" shop without discrimination against any person employed in its factories on the ground that he was or was not a member of any labor union. It has observed the same policy in the employment of persons to supervise the installation of its presses.

The complainant's presses are sold throughout the United States and in foreign countries. The presses which it builds are newspaper presses only, and they vary in size and capacity from a press that weighs 10,000 pounds to one that weighs ten times that. A single freight car suffices to carry the smaller presses while four cars are needed to transport the largest. Its presses adapted to metropolitan uses are capable of producing 30,000 complete papers an hour. The testimony is that complainant has three competitors: R. Hoe & Company of New York; the Goss Printing Press Company, of Chicago; and Walter Scott & Company, of Plainfield, New Jersey, each of which operates a "closed" shop. The Hoe Company plant is understood to be the largest of these and ten times the size of that of the complainant's. The Goss Company's is about twice that of the complainant's while the Scott Company's is more nearly equal to complainant's although somewhat larger. There are no other builders of newspaper presses in the country, although there are builders of job presses of some kinds upon which small county newspapers are sometimes printed. The installation of the presses is a difficult undertaking. The installation of a press of the largest type requires

the labor of five men working for two weeks. The record shows that the men employed to install the presses are employed not by
202 the complainant but by the complainant's customers. The acts complained of and sought to be restrained do not relate to the manufacture of the presses but to the installation and operation of them. The claim is that the labor difficulties complained of have been due to the fact that complainant has refused to permit its machines to be manufactured in a "closed" shop. A "closed" shop is an establishment in which the employees are all members of a labor union. And an "open" shop is one in which no such condition of employment is imposed, and no discrimination between union and non-union workers exists.

The International Association of Machinists with which defendants are connected is an unincorporated association of journeymen machinists with a membership of over 60,000. It is not a party to this suit and no relief is asked as against it.

The defendants Deering and Bramley are sued individually and as business agents of District No. 15 of the International Association. District No. 15 is one of the subdivisions of the International Association. It is a voluntary organization and embraces Local Lodges Nos. 328, 402, 406, 429, 434 and 721, each of which is a subdivision thereof, and each has its principal office in the City of New York, and each has jurisdiction over a certain group of the members of the International Association in that city.

Neyland is sued individually and as business agent of Local Lodge No. 328 which is, as has been stated, in the City of New York.

The defendant Nielson is sued individually and as business agent of the Riggers Protective Union. That organization is also unincorporated, and it is an association of workingmen engaged in handling, hauling and erecting machinery, and it has jurisdiction over all union men in New York City engaged in that business.

The defendant Keppler, sued individually and as Vice-President of the International Association of Machinists, does not appear to have been served, and has interposed no answer. He is, therefore, not to be considered.

203 The important fact is to be noted that no one of the defendants is or ever was an employee of the complainant, and that no local lodge or union or officer or member of any union in the place where the complainant manufactures its presses has been made a party defendant herein. The parties defendant are residents and citizens of New York, except the defendant Bramley, who is a resident and inhabitant of New Jersey, and the unions with which they are connected are local to New York and vicinity. The reason is that as before stated the acts complained of and sought to be restrained are acts which affect not the manufacture of the machines, but their sale, installation and operation thereafter.

It is alleged that nearly all of the skilled machinists in New York City are members of the International Association of Machinists, and that nearly all of the riggers in New York City are members of the Riggers' Protective Union, and that these union machinists and

riggers are affiliated with another unincorporated association known as the Building Trades Council of New York City, and the said Building Trades Council is composed of the various unions in the said city whose members are engaged in the building business, including the unions of some thirty different trades with an alleged membership of from 75,000 to 100,000.

It is the duty of courts to protect the life, liberty and property of all within their jurisdiction. Courts are not respecters of persons and the rights of employers and those of employees are entitled to equal protection.

Liberty of contract is a constitutional right secured to employers and employees alike. It consists in the ability at will to make or abstain from making a binding obligation. The employee has the right to choose his employer. The employer has the like right to choose his employee.

The defendants insist that all they have done has been to exercise the right, which they claim for the organizations which they represent, to say that their members shall not work for the complainant or handle the complainant's product. In other words that it is their right to say for whom their members shall work and upon
204 what they shall work. The complainant denies that that is the sole question which the facts present.

It was said some years ago in England in Skinner v. Kitch, 10 Cox C. C., 493, which was a case where an indictment and conviction was sustained for threatening that nearly all the employer's workmen would quit work unless he dismissed a non-union employee or compelled him to join the union. Blackburn, J., said that "a greater piece of tyranny than to insist that a master shall have his work stopped unless he consent to punish men who are his journeymen for refusing to belong to a union cannot well be."

In Berry v. Donovan, 188 Mass., 353 (1905), an agreement had been entered into by shoe manufacturers with the Boot and Shoe Workers' Union, a national organization, to hire as shoe workers only members of that organization. It was also agreed that the manufacturers would not retain any shoe worker in their employment after receiving notice from the union that a worker was objectionable to it, either on account of being in arrears for dues, or disobedience of union rules, or from any other cause. It seems that after this agreement had been made the union demanded that a certain employee, who had been working for the manufacturers for several years prior to this agreement and who was not a member of the union and refused to join it, should be discharged. This was done and the employee brought an action for damages against the defendant, who was the representative of the Boot and Shoe Workers' Union, and who demanded and procured his discharge. The court sustained a judgment against the defendant for $1,500, and held that the fact that the plaintiff's employment was not terminable at the will of the employer was material only as to the amount of the damages. The object was to make the plant a "closed" shop. The court said: "If such an object were treated as legitimate, and allowed to be pursued to its complete accomplishment, every employee

would be forced into membership in a union, and the unions, by a combination of those in different trades and occupations, would have complete and absolute control of all the industries of the
205 country. Employers would be forced to yield to all their demands, or give up business. The attainment of such an object in the struggle with employers would not be competition, but monopoly. A monopoly, controlling anything which the world must have, is fatal to prosperity and progress. In matters of this kind the law does not tolerate monopolies. The attempt to force all laborers to combine in unions is against the policy of the law, because it aims at monopoly." The court was unanimous in its opinion. See also Plant Martell v. White, 185 Mass., 255.

In Connors v. Connolly, 86 Conn., 641 (1913) it was held in a carefully considered case that a contract entered into by the United Hatters of North America and substantially all the manufacturers of hats in Danbury to the effect that union workmen only should thereafter be employed is contrary to public policy. The tendency of such an agreement, the court said, is to expose a non-union workman to the tyranny of the will of others, and to create a monopoly which would exclude what he has to dispose of, and other people need, from the open market, or perhaps from any market. The plaintiff in that case was a hat maker in Danbury and was discharged from employment and prevented from getting work by the concerted acts of the defendants, members of a labor union, who attempted to justify their conduct under the agreement not to employ non-union workmen. The attempted justification failed, the court reviewing the subject in an exhaustive and carefully reasoned opinion concluded that the agreement was void as opposed to sound public policy.

A contrary view of the matter was taken in Kemp v. Division No. 241, 255 Ill., 213, 226, 227 (1912) where it was said in an opinion written by Cooke, J.: "If it is proper for workmen to organize themselves into such combinations as labor unions, it must necessarily follow that it is proper for them to adopt any proper means to preserve that organization. If the securing of the closed shop is deemed by the members of a labor union of the utmost importance and necessary for the preservation of their organization, through which,
206 alone, they have been enabled to secure wages and better working conditions, and if to secure that is the primary object of the threat to strike, even though in the successful prosecution of the object of the combination injury may result incidentally to non-union men through the loss of their positions, that object does not become unlawful." The opinion of Judge Cooke was concurred in by two other members of the court. Three judges dissented. The sole purpose of the strike in that case was to insure the employment of union men and to compel the discharge of certain employees who had withdrawn from the union. The conclusion reached by Judge Cooke became the decision of the court by its acceptance by Judge Carter who cast the deciding vote and wrote a separate opinion in which he stated that he concurred in the final conclusion but not in all the reasoning. He appears, however, to have thought that the threatened injury to the complainants was justifiable as an act of

competition and that even if the purpose of the strike were unlawful so that defendants would be liable in a civil action if complainants were discharged still an injunction should not issue as that would be in effect to compel them to continue in their employer's service unwillingly. The dissenting judges stated that the result reached was contrary to the law of Illinois as declared in repeated decisions covering a period of 14 years, citing Doremus v. Hennessy, 176 Ill., 608, and London Guarantee & Accident Co. v. Horn, 206 Ill., 493. They held that the right of a labor organization to enforce a "closed" shop for the mere purpose of strengthening the organization in future contests with the employer is not of the same character as or equal to the right of the individual to dispose of his labor at his own will.

In Gray v. Building Trades Council, 91 Minn., 171 (1903) the whole controversy rested on the effort of defendants to compel the plaintiffs to employ union labor only. The question was whether the efforts made in that direction were legitimate to the doctrine that members of labor unions may singly or in a body quit the service of their employer, and for the purpose of strengthening their
207 union persuade and induce others in the same occupation to join it, and as a means to that end refuse to allow their members to work in places where non-union labor is employed. This the court declared to be legitimate and refused to enjoin, although it held that boycotting might be restrained by injunction.

In Bossert v. Dhuy, 221 N. Y., 342, 355 (1917) the court referring to National Protective Association v. Cumming, 53 App. Div. (N. Y.) 227, 230, declared that it was clearly established in that case that workingmen may organize for purposes deemed beneficial to themselves and in that organized capacity may determine that their members shall not work with non members or upon specified work or kinds of work. It declared that "An Association of individuals may determine that its members shall not work for specified employers of labor. The question ever is as to its purpose in reaching such determination. If the determination is reached in good faith for the purpose of bettering the condition of its members and not through malice or otherwise to injure an employer the fact that such action may result in incidental injury to the employer does not constitute a justification for issuing an injunction against enforcing such action."

There is thus a decided difference of opinion in the State courts as to the rights which labor organizations have to interfere with an employer in the management and control of his business in order to unionize it. The question came before the Supreme Court of the United States in 1917 in Hitchman Coal & Coke Company v. Mitchell not yet reported. As the jurisdiction of the District Court, from which the case came, was based solely upon diversity of citizenship, the decision was reached upon the common law of the State of West Virginia, there being no statute governing the matter. The company brought suit to enjoin the defendants who were sued as individuals and as officers of the United Mine Workers of America and of its local branches which had jurisdiction over the territory within

which the plaintiff's mine was situated. The District Court granted an injunction as prayed. 202 Fed., 512 (1912). The Circuit Court of Appeals reversed the case and dismissed the bill. 214
208 Fed., 685 (1914). And the Supreme Court reversed the Circuit Court of Appeals and affirmed the decree of the District Court with slight modifications. As modified the defendants were restrained from "Interfering or attempting to interfere with plaintiff's employees for the purpose of unionizing plaintiff's mine without its consent, by representing or causing to be represented to any of plaintiff's employees or to any person who might become an employee of plaintiff, that such person will suffer or is likely to suffer some loss or trouble in continuing in or in entering the employment of plaintiff, by reason of plaintiff not recognizing the Union, or because plaintiff runs a non-union mine," as well as certain other acts which need not here be specified. In the above case the employees do not appear to have been employed for any definite period of time, but in applying for work they were required, as a condition of obtaining employment, to agree that they would not, while in the service of the company, be a member of the union, and if they joined the union that they would withdraw from the company's employ. The case of Eagle Glass & Manufacturing Company v. Rowe, decided at the same time the Hitchman Case was, involved very much the same question, and the court reversed the Circuit Court of Appeals which held that no injunction should issue and dismissed the bill. The Supreme Court held its action erroneous: "(*a*) because plaintiff was entitled by law to be protected from interference with the good will of its employees, although they were at liberty to quit the employment at pleasure; (*b*) because the case involved no question of the rights of employees, and their right to quit the employment gave to defendants no right to instigate a strike; and (*c*) because the methods pursued by the defendants were not lawful methods."

The above decisions very much restrict the right of labor unions to interfere with employers of labor in the management of their business. And this court must follow the law as laid down by the court in all cases to which it is applicable. But, as we have before remarked, the decision goes upon the common law of West Virginia, there being no statute affecting it and no authoritative decision of the courts of that State. The New York Court of Appeals
209 in Bossert v. Dhuy, supra, passed upon the rights of labor unions under the common law of the State of New York, which is the State in which most of the acts complained of were done, and where the defendants, except Bramley, reside. The New York court in the case referred to decided that it was not illegal for the United Brotherhood of Carpenters to refuse to allow its members to work with non-union men, and that it was not illegal for it to refuse to allow its members to work in the erection of materials furnished by a non-union shop. A case is only authority for what it actually decides. And it has been frequently said that every decision is to be read as applicable to the particular facts proved since the generality of the language of an opinion is not intended as an exposition of the whole law, but is to be understood as governed by

the particular facts of the case which is decided. In the case before the New York Court it was passing upon a general rule applicable to all non-union mills, and to all non-union made materials. And the court took pains to point out (p. 355) that a general rule of this sort "differs entirely from a general boycott of a particular dealer or manufacturer with a malicious intent and purpose to destroy the good will or business of such dealer or manufacturer."

The question whether a labor organization can call those of its members out on strike who work for A because he maintains a closed shop while permitting other members to work for B, C, and D, who also maintain closed shops in the same industry, is not the same question as that which arises when it calls out all its members who work for A, B, C and D and for anyone else who maintains a closed shop. As we understand the New York decision the court dealt in that case with labor organizations which made no discrimination, but applied its rules to all alike. The members were not to work for anyone who maintained an open shop, and they were not to work upon any material which came out of any open shop. In the case now in this court the record contains the testimony of the president of the Exposition Company in New York City who said Deer-
210 ing told him they were going to enforce the union closed shop rule against complainant "because it was their opportunity of getting back at Mr. Stone, the president of the Company." He also testified that Newland told him "that Stone had driven his brother out of Battle Creek so that his brother could not get a job there and he wanted to get back at him." When the president asked them whether anybody else in the show was on the unfair list "they mentioned the Oswego Machine Company, stating that they might follow the same policy with that as with Mr. Stone, but they did not think they would bother about it; that Stone was fundamentally the one against whom they wanted to enforce this ruling in this show." It does not appear, however, that the Oswego Machine Company was in the same industry with the complainant. On the cross-examination the complainant's president, however, testified as follows:

"I know that the Machinists' Union was endeavoring to have this done in all the plants in the country where our industry was involved, and that they were asking the same from us as they were asking from the Hoe Company, the Goss Company, and the other printing press manufacturers, so that we were not selected from the printing trades industry for these demands or the attempts to enforce them, and I understood that the Goss Company, the Hoe Company and the Scott Company, at Plainfield, had all granted these conditions, so that the last one in which any drastic efforts were made to create the eight-hour day and establish a minimum scale was our concern."

It may be conceded that the defendants were endeavoring to establish uniform conditions in the industry in which the complainant was engaged. It follows therefore that under the New York law, as expounded by the New York Court of Appeals, the defendants were within their rights, unless there are other circumstances which make the rule laid down in that case inapplicable.

It is said the defendants are not engaged in a peaceful strike, but in an alleged boycott, and that their conduct seeks to coerce complainant's customers who are in turn to coerce the complainant into unionizing its business against its will.

211 A strike and a boycott are two quite distinct matters. A strike is an effort on the part of employees to obtain higher wages or shorter hours or a closed shop by stopping work at a preconcerted time. It is an attack made by employees upon their employer, by labor upon capital. But a boycott made by union labor against a product manufactured by non-union labor is an attack upon both labor and capital. It is union employees on the one side and non-union employees and the open shop employer on the other. The principles applicable to a boycott are not applicable to a strike. The strike in Battle Creek may be lawful, while the boycott of the product in New York may be unlawful. The use of the boycott is very generally held to be the use of unlawful means, and it is not material where it is resorted to whether the end which is sought in—this case the unionizing of the shops in Michigan—is lawful or not.

A boycott is a combination formed to injure the trade or business or occupation of another by preventing other persons from doing business with him by threatening injury to the trade, business or occupation of those who have business relations with him.

And in Martin's "The Modern Law of Labor Unions," p. 104, it is said that "if the things done or the words spoken, are such that they will excite fear or a reasonable apprehension of damage, and so influence those for whom designed as to prevent them from freely doing what they desire, and the law permits, they may be restrained and the courts will look beyond the mere letter of the act or word into its spirit or intent." And see State v. Stockford, 77 Conn., 227; Purvis v. United Brotherhood of Carpenters & Joiners, 214 Pa. St. 344; State v. Stewart, 59 Vermont, 273; Hey v. Wilson, 232 Ill. 389; Beck v. Railway Teamsters' Protective Union, 118 Mich., 497. In Quinn v. Leathem, 1901 A. C., 495, Lord Lindley in the House of Lords declared that a threat to call men out given by a trade union official to an employer of men belonging to the union and willing to work with him "is a form of coercion, intimidation, molestation or annoyance to them and to him very difficult to resist."

212 And if the defendants are engaged in an unlawful conspiracy to destroy the complainant's business it is as though they were in a conspiracy to destroy the complainant's presses, for its business is as much property and as much entitled to protection as are the presses. In Martin's "The Modern Law of Labor Unions", sec. 84 the law is stated as follows:

"A person's business, aside from the money, chattels, plant, or other tangible property employed therein, is in every sense of the word property, and as such is, if lawful, entitled to protection from all unlawful interference, whether the object of that interference be to compel customers or prospective customers to refrain from patronizing him, or persons dealing in material or products necessary to his business to refrain from furnishing him therewith, or to re-

strain workmen from furnishing him with the labor necessary to such business."

It appears that certain persons officially connected with the International Association of Machinists, one of the defendants herein, called at complainant's office and stated that they noticed that complainant was ready to ship a press to the New York World, and that unless it unionized its factory at Battle Creek they would see that the press never turned a wheel in New York City, and that no teamster in New York would be allowed to handle or have it. The press was delivered at the office of the World after dark to avoid trouble and the defendant Keppler on the same night called on complainant's president in New York and stated that all the men employed on it would be called out on strike that night and would not return to work the following morning. As a result of argument between the two men that threat was withdrawn and the work of installation was allowed to proceed.

In December, 1913, the Italian Herald, of New York City, purchased a press of complainant. The defendant Deering arrived at the office of that paper before the press arrived, and informed those in charge of the paper that they had no right to purchase a press from the complainant as it knew it maintained an open shop, and that as soon as the press arrived "we will give a mauldo for the Italian Herald and the Duplex and we try to make all the trouble possible to the Duplex." The trouble was made as promised. The trucking company was told not to handle any more of the press after a part of it was delivered. Deering stated that the members of different building trade unions that were at work on the building would be called off on strike. The owner of the building feared that the completion of the building would be held up for two or three weeks if the Herald went on with the installation of the press and said that it would have to be discontinued until after the union men in all the other trades "had completed their work on the building and left entirely" as the other trades would be ordered out on strike. The work of installation was stopped until Saturday afternoon and then it was completed by working that afternoon and night and Sunday morning when the men employed on the building were not working. The defendant Deering the next day told the complainant's representative:

"You put one over on me this time but you will never do it again and I am going to make it more and more difficult for the Duplex Printing Press Company to make installations, and will interfere with their work in every way possible. I am very sorry for the salesmen; it is going to be more difficult for the salesmen to get orders for Duplex presses."

In February 1914 the Italian Herald put in another of complainant's presses and when the press was being carted to the Herald's office Deering instructed the truckman to quit work and the delivery of the press was stopped. Later when the press was delivered and was being installed Deering informed two of the workmen that they had better quit or he would take their cards away. When they refused he walked out saying, "Very well my laddie." On the

214 following day when these two men were on their way home from their work they were struck from behind and knocked senseless on the sidewalk about a block away from the building in which they had been at work. One of the men testified that "these three men assaulted us, clubbed us, kicked us and left us unconscious on the sidewalk." They did not know the men who assaulted them, and it does not appear that they were connected with the defendants. But as the motive does not appear to have been robbery the inference that the assault grew out of the pending difficulties is perhaps not unnatural.

The New York Law Journal purchased one of complainant's presses and Deering at once informed those in charge of that publication that they would not be able to have the press hauled to their plant. When the press was delivered at the Journal's place of publication, and after several crates had been carried into the building, Deering made his appearance upon the scene and said: "Here, I told you fellows not to do this; you know you should not do it," and he directed the truckmen "to quit the job," which they did. He also informed the Journal people "that he was going to do all possible to prevent the wheels of the Law Journal press revolving. If he could help it the press would never be started up in the City of New York. He said that the unions had unlimited financial means with which they could fight the Duplex Printing Press Company and which they were to use for that purpose, that eventually the Duplex Company would have to give in to the union, as other manufacturers had given in to the unions."

The complainant sold a press to the Bollettino della Sera, at New York City, and the work of erection was supervised by one Young. Deering told him not to erect the machinery and after he started to unload it, ordered the men that were working with him to quit work, which they did. They stopped at Deering's direction when they were unboxing and cleaning the machinery and carrying it into the building. A half a load of machinery was left on the sidewalk and
215 had to be loaded on the dray again and taken away. A day or two later Deering again met Young and stated he would do everything he could to prevent that machinery going into the Bollettino della Sera, and that he had notified the repair shops in that locality not to do any repairing on that machinery. He also said that he had heard of one or two breakdowns on Duplex machinery lately, and that there would be more the first of the year, as they were going to take aggressive action against the Duplex Company; that there was a prospective purchaser for Duplex machines in the Bronx, but that he had put a stop to that deal.

The complainant sold a press to Nicoletti Brothers in New York City. Deering asked Young, who was to supervise its installation, if he sided with the union or the Duplex Company, and Young, who was a member of the Machinists' Union, replied that he sided with the Duplex Company. Deering told Young he did not have to look after the installation of that machine, and that he could send word to the complainant that he was afraid to install it. Young replied that this would be untrue, but Deering stated that he "had good reasons

to be afraid to look after the Duplex Printing Press Company's work." Deering stated to Young that he would take his card away from him and would blacklist him as a scab all over the East. He told Young as a member of the union not to work upon the machinery of the Duplex Company. He followed Young down to the office of the trucking Company and directed the truckman "not to haul the machinery," that "it would make trouble" for him if he did. The truckman accordingly refused because Deering "would pull the men off the job," one of the men was told that he was to stay away from the job, because something was going to happen, and that if they got hold of him that he would prove an alibi.

The Plainfield Press of Plainfield New Jersey, purchased a press from the complainant and had so much trouble in getting it installed that it declined to consider making further purchases from
216 complainant, and on December 3, 1915, it wrote complainant as follows: "You will perhaps remember that we had considerable difficulty, and not a few subscriptions stopped when we put the Flatbed Duplex in, * * * and we do not care to encounter anything of that kind again. There are a large number of union machinists in this city, and the union is recognized by practically every shop, so that we do not care to run any risks again."

The complainant had a contract with the National Exposition Company of New York City which entitled it to place its presses in an exhibit to be made in the Grand Central Palace in that city. The defendant Deering informed the president of the Exposition that a strike would be called if any exhibits were unloaded or installed in any of the trades except by union men. When he was informed that one of the exhibits could not be put in place by his men because they would not know how to erect the machinery and would have to stand around and draw money while other men did the work, he replied: "Anyhow you will have to hire out men whether they can or not, or else there will not be anything else unloaded or there will not be any machinery put up." He informed the president of the Exposition that the complainant "could not exhibit and he would not allow them." The testimony of the president of the Exposition is: "I said, 'Do you realize that in doing it (excluding the complainant) you are apt to ruin my business?' And they said 'Yes, but they could not help it and the only way out of it was to cancel the Duplex contract.' I said I could not do that as I had a legal contract, and Deering said, 'You have got to cancel it or else there will be a strike on this show if they try to put that exhibit in.'" The Exposition was to receive $675 under its contract with the complainant which it did not want to lose and Deering was asked if the contract was canceled whether the Machinists' Union would make good what the Exposition Company lost or would stand any damages it might sustain if sued for a breach of contract. The answer was that the Machinists' Union would do nothing.

217 The Charles Britton Trucking Company *which* was usually employed to haul heavy presses and machinery in New York, and the head of the Company testified that he was informed by de-

defendant Deering that the company was not to haul any Duplex presses, and if it did there would be trouble. When the company undertook to haul the presses Deering appeared and called the men off the job.

The testimony shows not simply that union men have been instructed not to haul or install the complainant's machines as being the product of an unfair shop but that coercion has been resorted to by threats of taking their cards away (a very serious matter for a union man) and by telling them that they had good reason to be afraid to look after the work of the Duplex Printing Press, and that they would black list the men as scabs and make trouble for them. And men under most suspicious circumstances have been assaulted and felled unconscious to the ground. They have intimidated complainant's customers by threats to call out men engaged in other trades. The members of different building trades unions would be called off on strike and compelled to quit work on a building not yet completed and in which it was intended to install a press manufactured by complainant so that the owner of the building feared the work on the building would be held up two or three weeks. Pickets were employed. No repairs were to be made on machines installed. Threats of putting the machines out of order were likewise indulged in by defendants. The defendants in at least one instance sought to obtain the cancellation of one of complainant's contracts. And they have sought by direct and indirect means to prevent customers from buying any of complainant's machines. The facts of the case seem to us to be very different from the facts which appear in Bossert v. Dhuy. There was no attempt in that case to cancel contracts, no attempt to coerce union men to quit their jobs, no attempts to commit violence.

In Quinn v. Leathem, [1901] A. C., 495 a trade union notified Leathem that they would not work for him unless he unionized his shop. This he refused to do and the union thereupon notified one of his customers that they would not work for the latter if they bought Leathem's goods. Thereupon the customer ceased to buy from Leathem who brought suit against members of the union. It was held by the House of Lords that Leathem was entitled to recover. The Earl of Halsbury in his opinion said: "If upon these facts so found the plaintiff could have no remedy against those who have thus injured him, it could hardly be said that our jurisdiction was that of a civilized community." The case shows that the injury inflicted upon the complainant was without any justification whatever. And Lord Macnaghten in the same case said that the defendants conspired to do harm to Munce (customer) in order to compel him to do harm to Leathem, and so enable them to wreak their vengeance on Leathem's servants who were not members of the union. So in the case at bar defendants proposed to injure complainant's customers in New York in the hope that they will bring pressure to bear upon the complainant in Michigan to the end that it will discharge all non-union workmen from its factories in that State.

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In Hopkins v. Oxley Stave Co., 83 Fed. 912 (1897) the Circuit Court of Appeals for the Eighth Circuit said: "The right of an in-

dividual to carry on his business as he sees fit, and to use such implements or processes of manufacture as he desires to use, provided he follows a lawful avocation, and conducts it in a lawful manner, is entitled to as much consideration as his other personal rights; and the law should afford protection against the efforts of powerful combinations to rob him of that right, and coerce his will by intimidating his customers and destroying his patronage." In the case at bar the intent is to coerce complainant in Michigan by intimidating its customers in New York and by depriving it of their patronage.

In Iron Molders' Union v. Allis-Chalmers Co., 166 Fed. 45 (1908) the Circuit Court of Appeals in the Seventh Circuit declared
219 that striking workmen may not coerce third persons, not directly concerned in the strike, in refusing to buy or use the products of their late employer, any more than he may lawfully coerce third persons into refusing them shelter or food, but the only means of injuring each other which are lawful in such contest are those that operate directly and immediately upon the control and supply of work to be done and of labor to do it. And the court said that attempts to injure each other by coercing members of society who are not directly concerned in the pending controversy to make raids in the rear cannot be tolerated by organized society, for the direct, the primary, attack is upon society itself. In the case at bar the immediate injury is to the New York purchasers of complainant's presses, and the refusal to allow union labor to be employed in their installation is not because of any dispute with the New York owners of the presses or to raise wages in New York or to shorten hours there but is to coerce the New York customers so that they will coerce the manufacturer in Michigan.

In American Federation of Labor v. Buck's Stove & Range Co., App. Cases (D. C.) vol. 33 p. 83 (1909), an injunction was granted to restrain a conspiracy which threatened damage to persons having business dealings with the complainant and to restrain threats which tended to prevent others from freely transacting business with it. The principle upon which the decision went was that interference by a labor union with another's patronage is not justified by the fact that the remote object sought is a benefit to its own members. And an appeal to the Supreme Court of the United States was dismissed in 219 U. S. 581 (1911) on the ground that the question involved had become moot because of a settlement between the parties. In the opinion of Mr. Justice Robb of the Court of Appeals he said: "It matters not that the remote object of the combination was to benefit such members of the local unions as should be employed by complainant, because the law looks to the immediate, and not the incidental, object of the combination. If the immediate object is unlawful, the combination is unlawful. If the immediate object is lawful, as in the case of legitimate trade competition, in-
220 cluding strikes, the combination, generally speaking, is unlawful."

In Pickett v. Walsh, 192 Mass., 572 (1906) it was said that a refusal to work for A with whom the strikers have no dispute, because A works for B with whom the strikers have a dispute, for the purpose

of forcing A to force B to yield to the strikers' demands is without legal justification and may be enjoined.

In Burnham v. Dowd, 217 Mass., 351 (1914) the doctrine of Pickett v. Walsh, supra, was adhered to and the plaintiffs were held entitled to an injunction restraining defendants from threatening to strike or to leave the work of any owner, builder, or contractor by reason of such persons having purchased masons' supplies from the plaintiffs or having dealt otherwise with the plaintiffs, and from ordering or inducing any strike against an owner, builder or contractor for such reason. It was in intention and effect a boycott.

In Purvis v. United Brotherhood of Carpenters & Joiners, 214 Pa. St. (1906) the purpose of the defendants was to compel the plaintiffs to unionize their mill by working injury to their business. The right of the plaintiffs to an injunction was upheld and defendants were restrained from representing to the plaintiff's customers that they were likely to suffer loss or trouble in their business for purchasing building materials from the plaintiffs, and "from attempting by any scheme, combination or conspiracy among themselves or with others to annoy, hinder or interfere with or prevent any person or persons or corporation from purchasing building materials, or making contracts for the purchase of the same, from the plaintiffs, and from any and all acts * * * which * * * by putting or attempting to put any person or persons or corporation in fear of loss or trouble will tend to hinder, impede or obstruct the plaintiffs from making sale, or making contracts for sale, of building materials," etc.

In Door Co. v. Fuelle, 215 Mo., 421 (1908) it was held that a combination to injure or destroy the trade, business or occupation
221 of another by threatening or producing injury to the trade, occupation or business of those who have business relations with him is an unlawful conspiracy which can be restrained by injunction. The court also held that combinations between the officers and members of a labor union, or between such union and its executive officers and kindred associations, having for its direct object the immediate effect to injure and damage the business of persons at whom they are directed, and thereby to compel them to discharge their non-union employees and replace them with members of the union, and thereby incidentally and indirectly to benefit the parties to the combination is an unlawful conspiracy.

In concluding this phase of the subject it appears that although the defendants were engaged in an undertaking which the law of New York recognizes as legitimate, the unionization of complainant's factories, they have resorted to measures in the accomplishment of that end some of which the law does not countenance. The law does not permit either party to a labor dispute to use force, violence, threats of force, intimidation, or coercion. And words or acts which are calculated to cause one to fear injury to his person or to his business are equivalent to threats. Moreover the law does not permit any attempt to be made to cancel contracts which an employer has made with third persons.

There is, as we have seen, evidence of threats to call out men in the building trades from work on a building under construction for a customer of the complainant's because a press made by the complainant was about to be installed in the building. A strike of that kind is a sympathetic strike, that is one in which the striking employees have no demands or grievances of their own, but strike for the purpose of indirectly aiding others, having no direct relation to the advancement of the interests of the strikers, and courts have held that such a strike is an unjustifiable invasion of the rights of the employer. Labatt on Master & Servant, vol. 7, p. 8346 (ed. 1913).

But there is, in conclusion, another phase of the matter,
222 and one which is not the least important, which remains to be considered.

The complainant is engaged, as we have seen, in the business of manufacturing printing presses in its factories in the State of Michigan. But it is also engaged in interstate commerce as over 80 per cent of its presses are sold to customers outside the State.

The defendants not being able to prevent the complainant from manufacturing its presses in its factories in Michigan by non-union workers who are contented with their hours and their wages, have sought, it is charged, to restrain its trade and commerce by making its products non-salable in other States by the means already set forth in this opinion. The action of defendants is claimed to be contrary to the Anti-trust legislation of Congress.

The Sherman Anti-trust Act of 1890 had its origin in the evils of massed capital but the intent of Congress in its enactment was that the channels of interstate commerce should be kept free from all unreasonable obstruction whether of capital or labor. The interdiction laid upon capital was laid also upon labor, and embraced all combinations which placed obstructions in the currents of commerce between the States.

In Loewe v. Lawlor, 208 U. S., 274 (1908) the defendants had sought to unionize the plaintiff's factory by first instituting a strike to prevent production, and then by driving his non-union products out of interstate commerce through a boycott which rendered those products unsalable in the different States. The ultimate object was, in that case as in this, to unionize the plaintiff's factory. But the court held illegal any combination whatever to secure action "which essentially obstructs the free flow of commerce between States, or restricts in that regard the liberty of a trader to engage in business." And it held that a combination of labor organizations and the members thereof to compel a manufacturer whose goods are sold in other States to unionize his shops, and on his refusal to do so, to boycott his goods and prevent their sale in States other than his own until such time as the resulting damage forced him to comply with
223 their demands, was a combination in restraint of interstate trade or commerce within the meaning of the Sherman Act. The case was again before the court in 235 U. S., 522 (1914) and it was again affirmed that the conduct of the labor organization was within the prohibition of the Anti-Trust Act of 1890. In both

cases the decision of the court was unanimous, Chief-Justice Fuller writing the opinion in the first case and Mr. Justice Holmes writing in the second case.

In Eastern States Lumber Association v. United States, 234 U. S. 600 (1914) the court held that the circulation of a so-called official report among members of an association of retail dealers calling attention to actions of listed wholesale dealers in selling direct to consumers tended to prevent members of the association from dealing with the listed dealers referred to in the report, and to directly and unreasonably restrain trade by preventing it with such listed dealers, and was within the prohibitions of the Sherman Law.

In Paine Lumber Co. v. Neal, 244 U. S., 459 (1917) an injunction was asked to enjoin what was alleged to be a conspiracy to restrain interstate commerce. The bill was brought by certain corporations engaged in the manufacture of doors, sash, etc., in open shops against the representatives of the United Brotherhood of Carpenters and Joiners of America and others. The unions had entered into an agreement not to erect material made by non-union mechanics. And because of the refusal of union men to work with non-union men, and because employers quite generally found it to their interest to employ union men, it became largely unpracticable to erect carpenter work except by union labor. An injunction was asked to prevent the defendants from conspiring to refuse to work upon material because not made by union labor. It involved an attempt to drive open shop products out of commerce and in that respect the case resembles the one before the court. The majority opinion as we understand it does not decide whether the acts complained of constituted a violation of the Sherman Act. The minority opin-
224 ion of three of the Justices did not hesitate to say that the acts were in restraint of interstate commerce and were prohibited by the Sherman Law. The case arose in this Circuit and we affirmed the action of the District Court which dismissed the bill. The Supreme Court affirmed the decree on the ground that under the Sherman Anti-Trust Act, if the acts complained of amounted to a violation of that Act, a private person could not maintain a suit for an injunction under sec. 4 of that Act. U. S. Compiled Statutes (1916) Ann. vol. 8, p. 9655. There seems to be an intimation in the dissenting opinion (p. 473) that the court as a whole thought that the facts showed a violation of the Sherman Act. The inference is not so strong that one has any right to accept it as conclusive. If it could be so accepted this court would be bound to hold it to be decisive of this case, in so far as the question is whether the Sherman Act has been violated.

But I am unable to see any sound distinction between what was done in Loewe v. Lawlor and what was done in the instant case.

In Loewe v. Lawlor circulars were sent to dealers for the purpose of intimidating and coercing them into not purchasing from the complainant. In the instant case the plaintiff's customers do not seem to have been to any great extent, if at all, circularized, but organized labor was informed by letters and resolutions that complain-

ant's product was not to be installed and that members of the unions were to use their influence to prevent the placing of orders for the purchase of presses manufactured by it. All organized labor throughout the country was acquainted with the dispute and instructed *that* not to install the machinery "and if possible influence your employer not to have such machinery installed by unfair men, or that they will not let any more contracts to the Duplex Printing Press Company until organized labor is fairly dealt by." And the International Association of Machinists' Monthly Journal which circulated through all the local lodges and on news stands contained full information as to the attitude of labor toward
225 the complainant and the installation of its presses. The method pursued was intended to prevent the sale of the complainant's product.

In Loewe v. Lawlor, supra, and in the Eastern States Lumber Association v. United States supra, and in Gompers v. Bucke Stove & Range Company, 221 U. S., 418 (1911) the publication and use of letters, circulars and printed matter were the means resorted to in the attempt to restrain commerce. In the case last cited it is declared that the protective powers of the court extend to every device whereby property is irreparably damaged or interstate commerce restrained, otherwise the law would be made impotent.

In my opinion the things done and threatened to be done by the defendants tend to the destruction of the complainant's interstate trade. Whether an injunction can issue depends upon the construction to be placed upon what is known as the Clayton Act, which was passed by Congress in 1894. That Act modified the Sherman Act in certain important particulars. Under the Sherman Act the opinion prevailed that a private person could not maintain a suit for an injunction to restrain violations of the Act, in view of the fact that the Act made it the duty of the several district attorneys of the United States in their respective districts, under the direction of the Attorney-General, to institute proceedings to that end. U. S. Compiled Statutes (1916) Ann. vol. 8, sec. 8823. The Clayton Act however expressly provides "That any person, firm, corporation or association shall be entitled to sue for, and have injunctive relief, in any court of the United States having jurisdiction over the parties against threatened loss or damage by violation of the Anti-Trust Law," etc., U. S. Compiled Statutes (1916) Ann., vol. 8, sec. 8835, p. 9697.

The defendants, however, claim that while the Clayton Act authorizes a "person, firm, corporation or association" to sue for injunctive relief the right to do so is nevertheless restricted by other provisions of the statute, and that it is inapplicable to the
226 facts of this case. The defendants base this claim on the provision contained in sec. 6 of the Act which is found in the margin.* That section in effect declares that labor organizations

*"Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural

merely because organized are not to be held to be illegal combinations or conspiracies in restraint of trade, and that they are not to be restrained from "lawfully" carrying out their "legitimate" objects. In his opinion in the Paine Lumber Co., Case, supra, Mr. Justice Pitney declared that "neither in the section, nor in the committee reports, is there any indication of a purpose to render lawful or legitimate anything that before the act was unlawful, whether in the objects of such an organization or its members or in the measures adopted for accomplishing them." It is true this language was used in a dissenting opinion of three of the Justices. But the majority opinion indicates that the majority of the Justices must have entertained the same opinion, for Mr. Justice Holmes in his opinion states that he is a minority of the court in thinking that upon the facts involved in that case the Clayton Act established a policy inconsistent with the granting of an injunction. The injunction simply was withheld because at the time the decree was entered a private person or corporation could not sue for injunctive relief in that class of cases.

In the same connection attention may also be called to Stephens v. Ohio State Telephone Co., 240 Fed. 759, 771 (1917), in which District Judge Killits passed upon the second paragraph of sec.
227 20 of the Clayton Act which is found in the margin.* He there says: "The statute but enacts the position which courts have universally taken; there is nothing new in it." etc.

It is my opinion that if the acts complained of in this case would not have been lawful prior to the passage of the Clayton Act they are not lawful now.

The first paragraph of sec. 20 of the Clayton Act is found in the margin.* It relates to injunctions in a case between an employer and employees, etc. So far as the purposes of this case are concerned it would seem to suffice to say that the parties to this suit do not come within the classification therein named. No one of the defendants

organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws." U. S. Compiled Statutes (1916), Ann., p. 9686.

*"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States." U. S. Compiled Statutes (1916), Ann. vol. 2, p. 1964.

is now or ever was an employee of the complainant. And the relief prayed for does not contemplate protection from strikes among complainant's employees engaged in the manufacture of its printing presses. If, however it be contended that the intention of
228 Congress was that the Act should apply to any case growing out of a labor dispute even though none of the parties defendant had ever been in the complainant's employ, it would not prevent the issuance of the injunction. For it is to be noted that the Act does not absolutely prohibit the granting of an injunction, even in cases between an employer and employees.* The injunction may still be granted between employer and employees when "necessary to prevent irreparable injury to property, or to a property right of the party making the application." And it is so well settled that no citation of authorities is necessary that acts that will cause the destruction of one's property or business and acts that interfere with the carrying on of one's business destroying his custom or his profits do an irreparable injury and authorize the issuance of an injunction.

The achievement of the end sought by these defendants is not through an appeal to the purchasing public not to buy non-union made machines. And the defendants have not confined themselves to withdrawing union men from complainant's factories. The course which has been pursued has made the complainant's presses "a contraband of commerce," "a kind of commercial leper." The plan has been to make complainant's machines unmarketable
229 by preventing their being hauled, installed, operated or repaired or even exhibited to the public. If this can be done under the laws of the United States then it seems that no manufacturer of printing presses in this country can maintain an "open" shop and no machinist engaged in the manufacture of such presses can earn his living at his trade unless he consents to join a union, and be bound by all its rules and regulations and the channels of interstate commerce are practically closed against the products of an "open" shop. If the truckmen are in the unions and cannot handle non-union goods of what use is it to ship goods from Michigan to New York? And if the unions have a right to say what goods their members shall handle or shall not handle what reason is there for saying that union men employed by the railroads cannot refuse to handle any goods not made in an "open" shop? The railroads are common carriers it is true, but all the persons who hold themselves out as willing to carry goods for the public, draymen, carters, truckmen, wagoners and moving van companies, proprietors of taxicabs, omnibuses and baggage wagons are in like manner common carriers,

*"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney." U. S. Compiled Statutes (1916), Ann. p. 1964.

10 C. J., 49. And they may be engaged in interstate commerce as the goods they carry are being shipped outside the State or have been shipped into the State to be delivered to the consignees therein.

My associates do not agree with me in the conclusion at which I have arrived. The reasons for their disagreement will be found in the opinions which follow.

Therefore in accordance with their opinion, and contrary to my own, the decree is affirmed with costs.

230 United States Circuit Court of Appeals for the Second Circuit. October Term, 1917.

No. 120.

Argued December 13, 1917; Decided May 25, 1918.

DUPLEX PRINTING PRESS COMPANY, Complainant-Appellant,

v.

EMIL J. DEERING et al., Defendants-Appellees.

Appeal from the District Court of the United States for the Southern District of New York.

Before Rogers and Hough, Circuit Judges, and Learned Hand, District Judge.

HOUGH, *C. J.*:

The record at bar contains uncontradicted testimony (since defendants offered no evidence) divisible into two parts; one relating to acts of violence and threats of the same, directed against some of all of the persons managing or aiding in plaintiff's business, and directly tending to destroy that business through fear of physical injury,—the other part showing conclusively (what indeed defendants avow) a purpose long formed by the organizations represented only locally by the individual defendant threat-makers, to advise
231 and persuade all workers whose labor would in any way benefit any business effort of plaintiff, to abstain from such labor, and further to spread through the purchasing public a knowledge that if any one bought what plaintiff made, its transportation, erection, operation and repair would be rendered as difficult for the purchaser or user as the influence of the defendant unions could make it.

This action by the associations that are the real defendants was and is directed against plaintiff in particular, because it manufactures only one kind of printing press, and is the only maker of such presses which at date of bill filed still refused to unionize its establishment, and obey defendants' orders by operating a "closed shop." If there had been more than one similar non-union factory, all would have been equally obnoxious to defendants; though for very obvious reasons the campaign against numerous open shops would not have

been along quite the same lines, as that against a single rebel; the larger the party, the more united the majority, the easier it is to dispense with physical force, and rely on the persuasive suggestiveness of numbers. It is also easier to get assistance from other unions in other trades, for a powerful and successful organization than for one representing only a minority of workers in its own specialty.

The plaintiff was entitled in strictness of law to an injunction against the individual men who threatened, suggested and probably incited actual physical injury. They were also entitled to have prevented the open efforts to break or abort plaintiff's contract with the Exposition Co. The latter wrong however was (apparently) stopped partly by temporary injunction and partly by treaty, and there is no continuing business relation between plaintiff and that company; while the acts of violence all occurred years before trial, were not shown to have been more than the result of personal malice or bad judgment, on the part of a few defendants then acting as Union officials, and all or most of them out of office before the cause was brought on for hearing. Let it be assumed (though not
232 decided) that the comparative antiquity of these wrongful acts, and their sporadic nature would not affect the legal rights of plaintiff, yet we think no injunction should issue by reason of them. This opinion is entertained, because plaintiff by its counsel in this court, has plainly recognized in the principal point raised by the facts, something far and away more important than the attempted muzzling by writ of a few foolish men, who fell back on open threat or secret violence, instead of relying on that social discipline which is the real strength of labor unions, as well as of most other originally voluntary associations of human kind. He has therefore at this bar announced that no injunction was desired, because none would or could be of importance or effect, unless it went on the ground of illegality in the efforts of the defendant associations as such to unionize plaintiff's shop, such efforts consisting in words alone;—peaceful enough in their literal meaning, but necessarily as minatory in suggestion as the diplomatic note of a great power, that it would view with concern that which a weaker neighbor insisted on doing.

Thus the only matter we are asked to consider, and therefore the single point on which we shall express opinion, is whether the secondary boycott used or attempted by defendants against plaintiff, is in the present state of controlling statutes and decisions,—unlawful.

All substantial efforts to enforce such boycott took place in New York. In so far then as what is loosely called common law, i. e. the public policy of a state as ascertained and announced by its highest court, is concerned,—we think the recent decision of Bossert v. Dhuy, 221 N. Y., 342, fully recognizes and upholds the secondary boycott as lawful in New York, if unaccompanied by malice, force, violence or fraud,—and even if so accompanied what is unlawful is not the essential purpose of advancing the unification and control of a mass or masses of workers in a common field,—but the purely accidental and temporary means used for attainment. This is the very accident we have been so frankly and wisely asked to overlook

or disregard on this appeal. It is not necessary to expand
233 comment on this holding so far as the writer of this opinion is concerned; all that he could say was said in Gill, etc., Co. vs. Doerr, 214 F. R., 110,—a decision cited with apparent agreement in the Bossert case.

As plaintiff's business is largely interstate, and the attentions paid by defendants to plaintiff consisted essentially in trying to make it impossible for plaintiff to get its machines from Michigan to New York, or have them used there even if they successfully ran the gauntlet,—it seems plain that the defendant associations have agreed to do and attempted performance of the very thing pronounced unlawful in Loewe v. Lawlor, 208 U. S., 274 and 235 U. S., 522.

Therefore such interference with interstate commerce should be enjoined, unless the Clayton Act of October 14, 1914, forbids it.

It is not suggested that any other than Sections 6 and 20 of that statute can affect this case, and we feel so assured of the inapplicability of Section 6 that it is not thought necessary to discuss the matter.

Section 20 applies to cases

"between an employer and employees, or between employers and employees, or between employees or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment."

In such cases the statute proceeds to enumerate as lawful notwithstanding any earlier statute or decision emanating from national authority,—every peaceful and all the really important things the defendant associations have done.

Thus the question becomes this,—is the present litigation one between employers and employees, or an employer and employees, growing out of a dispute concerning terms or conditions of employment? The answer depends on whether the catalogued injuries are to be permitted only in litigations between an employer or employers and the workmen in (or perhaps lately in) their several estab-
234 lishments,—or also in cases however promoted, when the parties are generically the hired and the hirer and the dispute even an offshoot or by-blow of the endless quarrel over terms of employment?

The solution of the puzzle raised by a statute so blindly drawn as this one, is not easy, and the intimation as to the present division of the Supreme Court on the subject, given (purely obiter) in Paine, etc., Co. v. Neal, 244 U. S., 459, merely adds embarrassment. There is no ruling decision on the subject, and prognosis as to the probable disposition of the matter in a higher court based on anything as yet published in the United States Reports would be both unprofitable and improper. It is necessary to form opinion as upon new matter.

There was a dispute, and one concerning conditions of employment, and at plaintiff's Michigan factory long before this suit was brought, and before the plan of campaign,—the boycott,—which is the thing really complained of, was seriously attempted. The Machinists Union created the dispute, by calling a strike at plaintiff's

place, if it never existed before; that dispute did relate to conditions of employment, in that every striker and every affiliated machinist disputed the right of plaintiff or any other concern similarly situated to employ any one but a member of the Union; and so far as statutory interpretation is concerned it seems immaterial that no more than a trifling proportion of the workers in plaintiff's factory paid any attention to the strike order,—the dispute existed, and existed from the beginning between this plaintiff and the principal defendants, among whom are included by representation the dozen or so obedient union men in the factory. In strict truth this is a dispute between two masters, the union or social master and the paymaster, but unless the words employers and employees as ordinarily used and used in this statute, are to be given a strained and unusual meaning, they must refer to the business class or clan to which the parties litigant respectfully belong. We perceive no logical standing ground between this certainly broad meaning, and a holding that if all one's workmen strike (as they call it), or are summarily
235 discharged (as the paymaster calls it), the usual plaintiff is not an employer, and the frequent defendants are not employees,—because the formal relation of master and servant has ended. Yet such an interpretation would take nearly all meaning from Section 20,—as scarcely could a suit arise to which it would apply.

In so far as courts are permitted to study legislative proceedings and contemporary history for aid in statutory interpretation, we consider it plain that the designed, announced and widely known purpose of Section 20 (perhaps in conjunction with Section 6) was to legalize the secondary boycott at least in so far as it rests on or consists of, refusing to work for anyone who deals with the principal offender.

We are earnestly told that this rule gives to the workman the choice of being a pariah or a guild-slave, and to the employer a doubtful escape from bankruptcy by the path of commercial servitude. If this be true (and the writer is not disposed to question it) the result is imposed by Act of Congress,—the remedy is political not judicial.

236 United States Circuit Court of Appeals for the Second Circuit.
October Term, 1917.

No. 120.

Argued December 13, 1917; Decided May 25, 1918.

DUPLEX PRINTING PRESS COMPANY, Complainant-Appellant,

v.

EMIL J. DEERING et al., Defendants-Appellees.

Appeal from the District Court of the United States for the Southern District of New York.

Before Rogers and Hough, Circuit Judges, and Learned Hand, District Judge.

LEARNED HAND, *D. J.*:

I think that section 20 of the Clayton Act has legalized secondary boycotts in cases between an employer and employees, and that this was such a case, at least after the strike was declared on August 27. I do not think that the section applies only when the employer is plaintiff and his present or former employees are the defendants. Further, I think that the dispute here under any definition included the conditions of employment. I, therefore, concur in general in Judge Hough's reasoning and in the result, though I do not concur in all the expressions in his opinion.

Decree affirmed with costs.

247 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, Held at the Courtrooms, in the Postoffice Building, in the City of New York, on the 4th Day of June, one Thousand Nine Hundred and Eighteen.

Present: Hon. Henry Wade Rogers, Hon. Charles M. Hough, Circuit Judges, Hon. Learned Hand, District Judge.

DUPLEX PRINTING PRESS COMPANY, Complainant-Appellant,

v.

EMIL J. DEERING et al., Defendants-Appellees.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. W. R.

238 Endorsed: United States Circuit Court of Appeals, Second Circuit. Duplex Co. v. E. J. Deering. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed June 4, 1918. William Parkin, Clerk.

239 United States Circuit Court of Appeals for the Second Circuit.

DUPLEX PRINTING PRESS COMPANY, Appellant,

against

EMIL J. DEERING, WILLIAM BRAMLEY, Individually and as Business Agents of District No. 15 of the International Association of Machinists; Michael T. Neyland, Individually and as Business Agent of Local Lodge No. 328 of the International Association of Machinists, and Edward F. Neilsen, Individually and as Business Agent of Riggers' Protective Union; Jacob J. Kepgler, Individually and as Vice-President of the International Association of Machinists, Appellees.

The above-named corporation, Duplex Printing Press Company, complainant in the above-entitled cause, deeming itself aggrieved by the decree of affirmance made and entered in the above case by the honorable Circuit Court of Appeals for the Second Circuit on the 4th day of June, 1918, on the complainant's appeal from a final decree made and entered in the District Court of the United States for the Southern District of New York, on the 8th day of May, 1917, dismissing the bill of complaint, hereby appeals to the Supreme Court of the United States from the said decree of the United States Circuit Court of Appeals for the Second Circuit, dated June 4th, 1918, for the reasons specified in the assignment of errors herewith filed, and prays that its appeal be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the said Supreme Court of the United States at Washington and that the amount of a bond be fixed
240 to act as a bond for costs on appeal.

June 10th, 1918.

DUPLEX PRINTING PRESS COMPANY,
Petitioner-appellant,

By WALTER GORDON MERRITT,
Solicitor for Petitioner-appellant.

Ordered, that the appeal to the Supreme Court of the United States from the final decree of the United States Circuit Court of Appeals for the Second Circuit, herein prayed for, be granted and that a certified transcript of the record, testimony, exhibits, and all proceedings herein be transmitted to the Supreme Court of the United States and that the appellant give an undertaking or bond with surety and with conditions as required by law, in the sum of Two Hundred and Fifty Dollars, to be approved by the Clerk of this Court, to act as a bond for costs on appeal.

June 25, 1918.

MANTON,
United States Circuit Judge.

241 (Endorsed:) U. S. Circuit Court of Appeals for the Second Circuit. Duplex Printing Press Co., Appellant, against Emil J. Deering et al., Appellees. Petition and Order for Appeal. Austin, McLanahan & Merritt, Attorneys for Appellant, 135 Broadway, Borough of Manhattan, New York City. Due service of the within petition and order for appeal is admitted this 25th day of June, 1918. Frank X. Sullivan, Atty. for Defts.-Appellees. United States Circuit Court of Appeals, Second Circuit. Filed Jun- 26, 1918. William Parkin, Clerk.

242 United States Circuit Court of Appeals for the Second Circuit.

DUPLEX PRINTING PRESS COMPANY, Complainant-appellant,

against

EMIL J. DEERING et al., Defendants-appellees.

Now comes complainant Duplex Printing Press Company by Walter Gordon Merritt, of Counsel, and praying an appeal to the Supreme Court of the United States from a decree of affirmance rendered by the United States Circuit Court of Appeals for the Second Circuit in the above-entitled action on the 4th day of June, 1918, hereby files the following assignment of errors upon which it will rely on its prosecution of said appeal, and alleges that the said Circuit Court of Appeals erred as follows:

1. In affirming the final decree of the District Court dismissing the bill of complaint and awarding costs against the complainant.

2. In refusing to direct the issuance of a final injunction in behalf of the complainant as prayed for in the bill of complaint.

3. In refusing to hold that the combination of the defendants violates the Act of Congress of July 2nd, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

243 4. In refusing to hold that the complainant is entitled to an injunction under the Act of Congress approved October 15th, 1914, entitled "An Act to Supplement Existing Laws against Unlawful Restraints and Monopolies and for other purposes."

5. In refusing to hold that the combination of the defendants violates Subdivision 6 of Section 580 of Article LIV of the Penal Law of the State of New York, forbidding conspiracies "to commit any act injurious to trade or commerce," and that the complainant is entitled to protection therefrom.

6. In refusing to hold that the combination of the defendants violates Sections 340-341 of Article XXII of the General Business Law of the State of New York, and that complainant being irreparably injured in its property rights by such unlawful acts, is entitled to injunction and damages.

7. In refusing to hold that the combination of the defendants violates Subdivision 5 of Section 580 of the Penal Law of the State of New York.

8. In refusing to hold that the defendants are engaged in a combination and conspiracy to injure the complainant's good will, trade and business, and that such combination is unlawful at common law.

9. In refusing to hold that the combination of the defendants violates Section 530 of Article XLVIII of the Penal Law of the State of New York.

10. In refusing to hold that the combination of the defendants unlawfully seeks to prevent trucknen, who are common car-
244 riers, from performing their common law duty to serve those who purchase complainant's presses.

11. In refusing to hold that the combination of the defendants unlawfully seeks to induce the complainant's customers to violate their contracts with the complainant.

12. In refusing to hold that the combination of the defendants seeks to bring about the exclusive employment of union machinists throughout the entire city of New York and in fact throughout the entire country, and therefore seeks an unlawful monopoly.

13. In refusing to hold that Section 20 of the Act of Congress approved October 15th, 1914, entitled "An Act to Supplement Existing Laws against Unlawful Restraints and Monopolies, and for other purposes" as construed by the court is void for being repugnant to the Fifth Amendment of the Constitution of the United States.

14. In refusing to grant the complainant such other and further relief as the circumstances of the case may require.

Wherefore, complainant-appellant prays that the decree of the said honorable Court be reversed and that directions be given to grant the complainant-appellant the relief prayed for in its bill of complaint.

WALTER GORDON MERRITT.
Solicitor for Complainant-Appellant.

The foregoing assignment of errors submitted with petition for appeal June 25, 1918.

MANTON, *U. S. C. J.*

245 (Endorsed:) U. S. Circuit Court of Appeals, for the Second Circuit. Duplex Printing Press Co., Complainant-Appellant, 3—556

against Emil J. Deering et als., Defendants-Appellees. Assignment of Errors. Austin, McLanahan & Merritt, attorneys for Complainant-Appellant, 135 Broadway, Borough of Manhattan, New York City. Due Service of the within Assignment of Errors is admitted this 25th day of June, 1918. Frank X. Sullivan, attorney for Appellees. United States Circuit Court of Appeals, Second Circuit. Filed June 26, 1918. William Parkin, Clerk.

246 United States Circuit Court of Appeals, Second Circuit.

DUPLEX PRINTING PRESS COMPANY, Plaintiff-Appellant,
against
EMIL J. DEERING et als., Defendants-Respondents.

Bond on Appeal.

Know all men by these presents, that Duplex Printing Press Company of Battle Creek, Michigan, as principal, and National Surety Company, a corporation under the laws of the State of New York, with its principal place of business at No. 115 Broadway, in the City, County and State of New York, as surety, are held and firmly bound unto the above named Emil J. Deering et als. in the sum of Two Hundred and Fifty ($250.00) Dollars to be paid to the said Duplex Printing Press Company for the payment of which well and truly to be made, said principal and surety bind themselves, their heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed and dated the 10th day of June, 1918.

Whereas, the above named Duplex Printing Press Company has prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit, by the Circuit Court of Appeals for the Second Circuit.

Now, therefore, the condition of this obligation is such, that if the above named Duplex Printing Press Company shall prosecute said appeal to effect, and answer all damages and costs if it fails to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

DUPLEX PRINTING PRESS COMPANY.
By IRVING K. STONE, *President*.
NATIONAL SURETY COMPANY.
By H. E. EMMETT, *Resident Vice-President*.

Attest:
E. M. McCARTHY,
Resident Assistant Secretary.

STATE OF NEW YORK,
County of New York, ss:

On this — day of ——, 191–, before me personally came the within named —— ——, to me known, and known to me to be the

individual described in and who executed the within bond and — acknowledged that — executed the same.

—— ——.

247 (Endorsed:) United States Circuit Court of Appeals, Second District of New York. Duplex Printing Press Company, Plaintiff-Appellant, against Emil J. Deering et als., Defendants-Respondents. Bond on Appeal. Surety National Surety Company. Walter Gordon Merritt, Attorney for Appellant. I approve of the *written* Bond, and of the sufficiency of the surety thereon. June 25, 1918. Manton, U. S. C. J. United States Circuit Court of Appeals, Second Circuit. Filed June 26, 1918. William Parkin, Clerk.

Affidavit, Acknowledgment, and Justification by Guarantee or Surety Company.

STATE OF NEW YORK,
County of New York, ss:

On this 10th day of June, 1918, before me personally came H. E. Emmett, known to me to be the Resident Vice-President of National Surety Company, the corporation described in and which executed the foregoing Bond of Duplex Printing Press Company as surety and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said National Surety Company is duly incorporated under the laws of the State of New York, that said Company has complied with the provisions of the Act of Congress of August 13, 1894, that the seal affixed to the within Bond of Duplex Printing Press Company is the corporate seal of said National Surety Company, and was thereto affixed by authority of the Board of Directors of said Company, and that he signed his name thereto by like authority as Resident Vice-President of said Company, and that he is acquainted with E. M. McCarthy and knows him to be the Resident Assistant Secretary of said Company; and that the signature of said E. M. McCarthy subscribed to said Bond is in the genuine handwriting of said E. M. McCarthy, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company; unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of Eight Million dollars.

H. E. EMMETT.
(Deponent's Signature.)

Signed, sworn to, and acknowledged before me this 10th day of June, 1918.

F. E. FIELDS,
Comm. of Deeds.

STATE OF MICHIGAN,
County of Calhoun, ss:

On this 15th day of June, 1918, before me personally came Irving K. Stone; to me known, who, being by me duly sworn, did depose and say that he resides in Battle Creek, Mich.; that he is the President of the Duplex Printing Press Co., the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order.

[SEAL.] CHARLES A. GRAMES,
Notary Public.

My commission expires Dec. 7, 1918.

248 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 247 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Duplex Printing Press Co. against Emil J. Deering et al., as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 1st day of July in the year of our Lord One Thousand Nine Hundred and Eighteen and of the Independence of the said United States the One Hundred and Forty-second.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

249 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Emil J. Deering, William Bramley, individually and as Business Agents of District No. 15 of the International Association of Machinists; Michael T. Neyland, individually and as Business Agent of Local Lodge No. 328 of the International Association of Machinists; and Edward F. Nielson, individually and as Business Agent of Riggers' Protective Union; Jacob J. Keppler, individually and as Vice President of the International Association of Machinists:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be held in the City of Washington, District of Columbia, within thirty days from the date of this writ, to-wit, July 25 18, pursuant to an order of appeal filed in the Clerk's office of the Circuit Court of Appeals of the United States

for the Second Circuit, wherein Duplex Printing Press Company is appellant and you are appellees, to show cause, if any there be, why the decree in said order of appeal mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Witness, Honorable Edward Douglass White, Chief Justice of the United States this 25th day of June, in the year of our Lord One thousand nine hundred and eighteen and of the Independence of the United States the one hundred and forty-second.

MANTON,
United States Circuit Judge.

[Endorsed:] 6142. File No. —. U. S. Circuit Court of Appeals for the Second Circuit. Duplex Printing Press Co., Appellant, against Emil J. Deering et al., Appellees. Original Citation. Austin McLanahan & Merritt, attorneys for Appellant, 135 Broadway, Borough of Manhattan, New York City. Due Service of the within Citation is admitted this 25th day of June, 19—. Frank X. Sullivan, Attorney for Appellees. Received June 25. Frank X. Sullivan. Frank X. Sullivan. Frank X. Sullivan, Atty. for Defts.-Appellees. United States Circuit Court of Appeals, Second Circuit. Filed June 28, 1918. William Parkin, Clerk.

Endorsed on cover: File No. 26642. U. S. Circuit Court Appeals, 2d Circuit. Term No. 556. Duplex Printing Press Company, appellant, vs. Emil J. Deering and William Bramley, individually and as business agents of District No. 15 of the International Association of Machinists, et al. Filed July 11th, 1918. File No. 26642.

SEP 23 1918
JAMES D. MAHER,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1918.

No. [redacted]45

DUPLEX PRINTING PRESS COMPANY,
Appellant,

vs.

EMIL J. DEERING and WILLIAM BRAMLEY, individually and as Business Agents of District No. 15 of the International Association of Machinists, *et al.*,
Appellees.

MOTION TO ADVANCE.

DANIEL DAVENPORT,
WALTER GORDON MERRITT,
Attorneys for Appellant

The Hecla Press, 57 Warren St., N. Y. Tel. 6280 Barclay.

Supreme Court of the United States

OCTOBER TERM, 1918.

No. 556.

DUPLEX PRINTING PRESS COMPANY,
Appellant,

vs.

EMIL J. DEERING and WILLIAM BRAMLEY, individually and as Business Agents of District No. 15 of the International Association of Machinists, *et al.*,
Appellees.

MOTION TO ADVANCE.

To the Honorable the Supreme Court of the United States:

Comes now the appellant by its attorneys and moves that the above-entitled cause be advanced and set down for argument at an early date for the reasons hereinafter set forth.

Statement of Matter Involved.

The appellant in the above-entitled action is a manufacturer of printing presses at Battle Creek,

Mich., and in this action sought an injunction and damages against the defendants for combining to restrain and destroy its interstate trade and commerce. A preliminary injunction was originally issued. On May 8th, 1917, the District Court for the Southern District of New York after final hearing entered a decree of dismissal (p. 177), and on June 4th, 1918, the Circuit Court of Appeals by a divided court affirmed the decree of dismissal (p. 229).

At the trial the defendants offered no evidence, but the evidence offered by the appellant clearly proves, according to the contentions of appellant and the unanimous finding of the Circuit Court of Appeals, that the defendants were engaged in a combination to restrain the appellant's interstate trade by means of a secondary boycott. This boycott was maintained for the purpose of protecting union made printing presses from the interstate competition of the appellant's open shop products and was carried out by instituting and threatening to institute strikes wherever attempts were made to advertise, haul, unload, assemble or operate printing presses made by the appellant. By these means it was sought to make the appellant's products unmarketable in the several states.

Judge Hough in the Circuit Court of Appeals, in rendering the majority opinion, says (p. 218):

> "It seems plain that the defendant associations have agreed to do and attempted the performance of, the very thing pronounced unlawful in *Loewe* v. *Lawlor*, 208 U. S., 274, and 235 U. S., 522. Therefore such interference with interstate commerce should be enjoined unless the Clayton Act of October 11, 1914, forbids it."

In concluding he says (p. 219) that the "widely known purpose of Section 20 (perhaps in conjunction with Section 6) was to legalize the secondary boycott, at least in so far as it rests on or consists of refusing to work for anyone who deals with the principal offender."

In concurring with Judge Hough, Judge Learned Hand says (p. 220):

> "I think that Section 20 of the Clayton Act has legalized secondary boycotts in cases between an employer and employee, and that this was such a case," etc.

Judge Rogers in his dissenting opinion says (p. 212):

> "But I am unable to see any sound distinction between what was done in *Loewe v. Lawlor* and what was done in the instant case."

The Court was therefore unanimous in holding that the combination in question did not differ in principle from the combination in *Loewe v. Lawlor* and that the plaintiff was entitled to a decree unless Section 20 of the Clayton Act deprived it of that right.

Reasons in Support of Application.

I. The appellant's business is without protection.

II. The principal question of law involved, and upon which the Circuit Court of Appeals bases its decision, is of great and immediate importance to industry and transportation and to the Govern-

ment as an employer. This question is whether or not Section 20 of the Clayton Act of October 15th, 1914, has legalized the secondary boycott as a means of restraining interstate commerce and thereby repealed the two decisions in the *Danbury Hatters* case and the great body of law based thereon; and whether or not by an absolute legalization of the acts therein specified it has effected a *pro tanto* repeal of all other laws of the United States as against all employers, including public utilities and the Government itself.

III. The decision of the Circuit Court of Appeals is by a divided court, each Judge rendering a separate opinion.

IV. The decision of the Circuit Court of Appeals is contrary to the decision of this Court in *Paine* v. *Neal*, 244 U. S., 459, as understood by the appellant, and contrary to the decision in *U. S.* v. *Rintelen*, 233 Fed., 793, and conflicts with decisions in other circuits.

Under these circumstances we ask the Court to advance this cause for an early hearing.

Respectfully submitted,

DANIEL DAVENPORT,
WALTER GORDON MERRITT,
Attorneys for Appellant

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 556.

DUPLEX PRINTING PRESS COMPANY,
Appellant,

vs.

EMIL A. DEERING and WILLIAM BRAMLEY, individually and as Business Agents of District No. 15 of the International Association of Machinists, *et al.*,
Appellees.

To the Appellees and to Frank V. Sullivan, Esq., their attorney:

You and each of you will please take notice that on Monday, October 7th, at the opening of court on that day, or as soon thereafter as counsel can be heard, the appellant will move the above-entitled Court to advance the hearing of the above-entitled case.

DANIEL DAVENPORT.
WALTER GORDON MERRITT.
Solicitors and Attorneys for Appellant.

The undersigned join in the request that the cause be advanced.

.....

JAN 2 1920
JAMES D. MAHER,
CLERK.

No. 45

Supreme Court of the United States

DUPLEX PRINTING PRESS CO.,

Appellant.

against

EMIL J. DEERING, etc., *et als.*,

Appellees.

BRIEF FOR APPELLANT.

DANIEL DAVENPORT,
WALTER GORDON MERRITT,
Counsel for Appellant.

The Hecla Press, 57 Warren St., N. Y. Tel. 6280 Barclay.

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Supreme Court of the United States

DUPLEX PRINTING PRESS CO., Appellant, against EMIL J. DEERING, etc., *et al.*, Appellees.	No. 164.

BRIEF FOR APPELLANT.

The complainant appeals from a final decree of dismissal, which was affirmed by the Circuit Court of Appeals for the Second Circuit. The action is for an injunction and damages on account of the acts done by the defendants and others in furtherance of a conspiracy to restrain, injure and destroy the complainant's good-will, trade and business.

HISTORY OF THE CASE.

A preliminary injunction was issued at the time of the commencement of the action in April, 1914. After final trial in May, 1917, during which the defendants offered no evidence, a decree of dismissal was entered (p. 177). The complainant prosecuted an appeal to the Circuit Court of Appeals, with the result that three different opinions were rendered

(pp. 191-221), each holding that the case presented a secondary boycott identical in principle with that in the *Hatters'* case, but two judges holding that the Clayton Act of October 15, 1914, had legalized the secondary boycott and repealed the doctrine of the *Danbury Hatters'* case.

Summary of Evidence.

The facts are undisputed as defendants offered no evidence.

Complainant is a Michigan corporation engaged in the business of manufacturing printing presses at its factory in Battle Creek, Michigan. It employs about 200 machinists at the work of manufacturing printing presses in its Battle Creek factory in addition to office employees, traveling salesmen and expert machinists or road men, who supervise the erection of the presses for the complainant's customers at their various places of business. Complainant has always maintained the open shop policy both in connection with its business in Battle Creek and in supervising the erection of presses (fols. 367, 386). Its presses are sold throughout the United States and in foreign countries (fol. 366), and while it operates ten hours a day when busy, it usually runs eight hours in the winter time (fol. 418). Special emphasis is laid on the manufacture of presses for metropolitan newspapers which vary in weight from 10,000 pounds to 100,000 pounds, requiring from one to four railroad cars to transport them (fol. 367) and furnishing many dray loads when carted from the freight yards to the buildings where they are to be used. These presses being of a peculiar manufacture and made under special patents, the

ordinary mechanic or pressman is not competent to erect or operate them except under supervision and instruction of someone usually employed by the complainant who is familiar with their structure and operation (fols. 368-373). At the time of the commencement of this suit these presses were being installed by customers under complainant's supervision in several places throughout the Middle West and through the United States (fol. 374).

The complainant's presses are sold like ordinary commodities, the customer employing the draymen and the erectors for their hauling and installation.

The contracts covering the sale of the presses (Exhibit 5, fols. 440-449) provide in effect that the purchaser furnish "cartage at destination and to furnish *all necessary help for moving and setting up said machinery*," and the complainant agrees to send a competent man to superintend the erection and instruct a pressman (Exhibit 5). The testimony, as to the practice, is the same, showing that the customer employs the truckman and the labor for the erection (fols. 367, 413, 268, 270, 259). Neither did the complainant's representative operate the machine, but simply instructed a pressman (fols. 218-223, 236-238). Except for the supervising erector and instructor, it is admitted that these presses are sold and delivered as a completed product like any other commodity and that 80 per cent. of the sales are made to customers outside of the State of Michigan, orders being subject to acceptance at home office, and deliveries being made by common carriers through the channels of interstate commerce (Par. 4, Complaint—admitted, fols.

14-16). All strikes of draymen, erectors or operators to which we will refer are sympathetic strikes against customers and not strikes of complainant's employees.

Defendants are officers and members of the International Association of Machinists, an unincorporated association having over 73,000 members, who are distributed in about 850 locals throughout the United States and Canada (fols. 106-107). The International Association is also divided into districts, of which District 15 in New York City is one (fol. 107). The members of the Machinists' Union in New York City are also affiliated with the Building Trades Council, which is composed of some thirty different building trades with a membership of over 75,000 (admitted allegations of Par. 5 of Complaint, fol. 20). This body issued a notice that in order to avoid complications

> "none but members of the International Association of Machinists be employed in the building, assembling, erecting, dismantling, or repairing of machinery" (fols. 166-167).

The International Association publishes a Machinists' Monthly Journal, which is circulated through the local branches and on newsstands (fol. 108) and contained reports from time to time on the activities of the International Association of Machinists against the complainant.

The trouble between the parties began in 1910. At that time one of the complainant's presses was being erected for the *New York World*, and defendant Keppler, Vice-President of the International Association of Machinists, with Mr. Edwards, of the Pressmen's Union, and one other, called upon Mr. Stone, the principal officer of the complainant, at

a New York hotel (fol. 375). Mr. Keppler stated that he had been informed at Washington, the headquarters of the International Union, that this non-union press was being erected and he came to advise that they would not allow its erection to proceed because the press had been constructed in a shop that was not unionized (fol. 376). He advised that "he would have to call off the men" (fol. 377), which would involve a great deal of loss and inconvenience (fol. 378), but finally stated he would "*allow and permit* the men to finish the erection of the machine" (fol. 409), so that the work was concluded (fol. 379).

About a year after the installation of the *World* press the complainant sold a press to the *San Francisco Sun* (fol. 380) and defendant Keppler told Mr. Stone that they had received a telegram from the union in San Francisco asking "whether they should allow it to be erected" (fol. 380). During all this time Keppler insisted that the concern should unionize (fols. 380-381) and on this occasion sought to enforce his argument by saying that unionization would avoid these difficulties (fol. 381). Mr. Stone agreed that they would employ union men where convenient to erect the presses (fol. 382). This agreement referred to the men employed by the customers and meant they would influence their customers. This was the complainant's policy from that time on and as a result of this agreement the San Francisco press was erected without difficulty (fol. 383), and no trouble arose thereafter until April, 1913. In April, 1913, the defendants threatened to tie up the National Exhibition of printing press machinery at the Grand Central Palace in New York if the complainant was allowed to display its wares (fols. 323-

324), and this difficulty was only settled because the defendants believed in some way that complainant had agreed to unionize (fol. 313). We will say more of this hereafter, but point out these early attacks which antedated a small strike at the complainant's Battle Creek factory in August, 1913, in order to show that even before the strike the defendants had in mind a comprehensive scheme to cut off the sale and distribution of complainant's products in other states through strikes against customers. The small strike which followed was but an incident of this illegal scheme to cut off interstate trade and protect the union shops from open shop competition, as in the *Hatters'* case (*Lawlor v. Loewe*, 187 Fed., 522, C. C. A.).

In June, 1913, the defendants authorized a strike in the Battle Creek factory (fols. 113-111) and on August 22nd complainant, without knowledge of this proposed strike, laid off some men on account of light work (fol. 386). The defendants claimed discrimination against union men, but no discrimination was practised (fol. 386). The authorized strike was then ordered on August 27, 1913 (fol. 146), but in spite of picketing defendants could only get some eleven factory men and three road men to quit (fol. 387).

It is useless for the defendants to claim that the attack was made on the complainant because of belief in alleged discrimination in discharging some of its men on August 22nd, 1913. Attacks on complainant's trade had already begun. Two months before this alleged act of discrimination the defendants had determined upon a strike. Mr. Keppler himself reports that:

> "As the General Executive Board during its session in June this year had sanctioned a strike at the Duplex Printing Press shop and other ten-hour shops in the printing machinery industry, there was nothing else to do but to carry out their instructions and therefore wired our local organizer, Brother Thompson, who was on the ground, to declare a strike, which was done August 27" (fols. 113-114; *Journ.*, Oct., 1913).

On August 22nd Deering drafted and mailed to the complainant a letter (Exhibit 7, fols. 455-471, 112) in which he stated that the General Board had instructed him "to prepare for action," and in the *Machinists' Journal* for October, 1913, he states:

> "I regret to say, however, that just about the time this letter reached the Duplex Printing Press Company, word was received from Battle Creek that eleven of our members had been discharged, which was closely followed by eight more being let go, discrimination being alleged" (fol. 113).

It is, therefore, evident that the strike was authorized in June and that Keppler proceeded to issue final notice, all before the complainant dismissed some employees because of light work. The alleged discrimination was not, therefore, the cause of the strike. Keppler thereupon announced "that this fight will undoubtedly be a bitter one" (fol. 115). When the strike failed the boycott or the attack upon the complainant's trade and commerce was continued, but with more persistence and effect than before. In the *Journal* for October, 1914, Mr. Keppler, vice-president of the union, reports:

> "As the pressmen and printers' internationals have signified their willingness to as-

> sist wherever possible, and with our own members and other metal trades doing their part, there is no reason why we cannot in time bring this company to the realization," etc.
>
> "Letters have also been sent to our organizers, business agents, and all interested parties, urging them to be on the lookout for presses coming into their locality from the Duplex Company" (fols. 115-116).

On October 10th, 1913, defendant Keppler sent out a circular signed by himself and President Johnson (fols. 143-148) addressed promiscuously to "Dear Sirs and Brothers" which speaks of the attitude of the complainant toward the eight-hour movement, falsely represents that it was "systematically discriminating against organized labor from time to time" and declares that "The International Association of Machinists was finally compelled to declare a strike against this Company August 27th." The circular then continues:

> "Further, as this Company's Presses are shipped to all parts of the Country, generally in contact with Union men, and as our Road men are also on the strike we urge you to bring this to the attention of Allied Printing Trades in your locality, thus acquainting them of this Company's most unfair attitude towards Organized Labor, and if possible influence your Employer not to have such Machinery installed by unfair men, or that they will not let any more contracts to the Duplex P. P. Co., until Organized Labor is fairly dealt by.
>
> We would further urge you or your members to see to it that when Machinists install or repair any Printing Machinery in your Establishment, that they carry cards in

> the I. A. of M., as there are some other firms who have not as yet agreed to Eight (8) Hours, and this will have a tendency in bringing them to terms."

In the November, 1913, *Journal* we have this report:

> "The Grand Lodge endorsed Battle Creek's letter of appeal for finances and since has sent out letters to all allied printing trades Councils, printers, pressmen, photo engravers and stereotypers' locals urging their moral assistance to bring the strike at the Duplex P. P. Co. to a successful termination. Further, to say to our general members that our road men are also on strike and it is necessary to acquaint all when coming in contact with such machinery, that no member of the I. A. of M. is employed at the Battle Creek shop, nor has any machinist of the I. A. of M. a card or right to install such work" (fol. 118).

In the December *Journal* for 1913, defendant Keppler reports:

> "Conference was also held in Chicago with the printing pressmen relative to Battle Creek Duplex Printing Press eight-hour strike, also with other printing tradesmen. They have been in touch with this company, all of which seemed to be of great benefit to us," etc. (fols. 119-120).

In the *Journal* for February, 1914, defendant Keppler reports concerning the complainant:

> "This company has admitted that much harm has been done them on the outside, with many publishers having cancelled orders, and their machinery not being erected, so I

> would again suggest that no matter what our next conference may bring forth, for all to get in touch with the local printing tradesmen," etc. (fol. 122).

In the *Journal* for March, 1914, defendant Keppler reports on a telegram from the complainant expressing a willingness to adopt the eight hours, and defendant Keppler states that this was not sufficient unless the questions of overtime rates and many other matters were settled. He then adds:

> "I would therefore again urge our people to appoint a committee in their locality and put facts before the Allied Printing Trades that we are still on strike at the Duplex Printing Press Co. of Battle Creek, Mich.," etc. (fol. 125).

In line with his report in the March *Journal*, and his exhortations to members, defendant Keppler issued another circular against the complainant, which reiterates again the action of those conspirators at their St. Louis conference (fols. 150-154). The essential part of the circular is as follows:

> "INTERNATIONAL ASSOCIATION OF MACHINISTS
>
> District Lodge No. 15
>
> April 4, 1914.
>
> To the G. E. B.; Vice Presidents; Business Agents; and Organizers.
>
> EIGHT HOURS THAT'S ALL.
>
> Greeting:
>
> During the recent St. Louis Conference the Committee on Printing and Paper Mak-

ing Machinery reported on that Industry, *and a transcript of that report is here reproduced*; as follows:

> 'That all representatives of the I. A. M., when organizing in various localities, shall endeavor to attend the local Allied Printing Trades Council meetings from time to time, urging the members of the Allied Printing Trades to demand the I. A. of M. due books of Machinists, who may be installing or repairing machinery. Also, to make it known that our members are on strike for eight (8) hours, against the Duplex Printing Press Co. of Battle Creek, Mich., and the Oswego Machine Co. of Oswego, N. Y.—the latter are builders of paper cutting machinery—*requesting them to assist wherever possible, to prevent the installation of this unfair machinery, and also, persuade if possible, fair employers from letting further contracts for machinery to either of these firms.*'

Copies of the enclosed letter have also been mailed to all Allied Printing Trades Councils, and locals, and have produced results.

At this time, it is most essential to again acquaint all Organized Labor, with the unfair attitude of the Duplex Printing Press Co. and the Oswego Machine Co. The Duplex Co. has finally put their plant on an eight (8) hour day basis, but they still refuse to reinstate our striking members, or to adjust the wage scale.

We feel that if our representatives will attend the meetings of the Allied Printing Trades Councils at this time, placing the facts before them, and urging them to comply, as nearly as possible with the contents set forth in the enclosed circular, that a settlement will be reached in the near future."

In the *Journal* for May, 1914, defendant Keppler reports:

> "Letters have also been sent to all of our representatives urging them to acquaint allied printing trades of the unfair methods of the Duplex Printing Press Co. of Battle Creek, Mich., and the Oswego Machine Co. of Oswego, N. Y., as our members are on strike there for eight hours, so it would not be amiss at this time to also request all of our members to be on the lookout for such machinery coming into their locality" (fols. 127-128).

In the *Journal* for July, 1914, defendant Keppler reports:

> "Conventions of printing pressmen, stereotypers and book binders held in Rogersville, Tenn., Newark, N. J., and Denver, Colo., respectively, are being looked after, and the Battle Creek Duplex P. P. Co. strike will be taken care of" (fol. 130).

In the *Journal* for August, 1914, defendant Keppler reports:

> "At the Pressmen's Convention which Organizer Davison attended, reports show progress in extending our working agreement and passing resolutions relative to the Duplex P. P. Co. strike in Battle Creek, Mich. The same may be said of the Bookbinders and Stereotypers' Conventions" (fol. 131).

The nature of these resolutions passed at the conventions of the pressmen, stereotypers and bookbinders, and the co-operation between the defendant and those organizations, is shown by the resolutions

passed at the 26th Annual Convention of the Pressmen, held in Rogersville, Tenn., in June, 1914 (fols. 191-194). This is one of the conventions referred to by defendant Keppler in the foregoing reports from July and August *Journals*, and the resolutions passed at this convention contain the following:

> "Whereas, The Duplex Printing Press Company, of Battle Creek, Mich., have placed on the market a press known as the Duplex tubular plate printing press for newspapers of twelve pages or under; and
>
> Whereas, Through their agents they have misrepresented their press to the publishers whereby they claim their press can be operated with less men than the union contracts with the American publishers' association call for, and
>
> Whereas, They have been unfair to their machinists and where they locked out eleven machinists on August 20, 1913, and later, on 22nd of August, without any cause locked out seven more officers of union and committee, and have been invariably unfair to union labor wherever employed; therefore be it
>
> Resolved, That the International Printing Pressmen and Assistants' Union in their Twenty-Sixth Annual Convention assembled, do hereby disapprove and condemn their action in misrepresenting their presses to prospective buyers, and which has been a detriment to our local unions in their working conditions throughout the country.
>
> Whereas, They continue to misrepresent their press, be it further
>
> Resolved, That the International Printing Pressmen and Assistants' Union in Twenty-Sixth Annual Convention assembled, adopt

these resolutions and a copy sent to the Duplex Printing Press Company, of Battle Creek, Mich., and a copy be spread on the minutes of this convention and a copy sent to the American Pressmen for publication.

WEB PRESSMEN'S UNION No. 20,
CINCINNATI, OHIO.

Per W. A. McKay, Delegate."

This resolution was referred to committee on resolutions and passed on the fifth day of the convention.

Another resolution was also passed at the same convention (fols. 195-200), as follows:

"Whereas, The International Association of Machinists is affiliated with the A. F. of L., also with the building, metal, railroad and label departments thereof, and has so changed its laws to bring about closer affiliation of workmen and women engaged in any great industry, to the end that joint action may be brought if necessary; and

Whereas, Machinists, apprentices and helpers, numbering many thousands engaged in the making, erecting, installing, dismantling or repairing of machinery of all descriptions used by printing trades, are organizing this industry for the establishment of the eight (8) hour day, with many employers now operating on the eight (8) hour basis, and to further assist, if necessary, those with whom we come in contact in our daily labor in various printing establishments, and

Whereas, The general trend of labor organizations today is undoubtedly toward

bringing about closer affiliation of kindred trades employed in a similar industry, so grievances may be more readily adjusted by those familiar with same, with joint action brought about when being oppressed by unscrupulous employers; therefore be it

Resolved, That we, the International Association of Machinists, urge the delegates of the Printing Pressmen and Assistants' Union in convention assembled to endorse this resolution, to the end that we may bring about a condition whereby we may at all times act in unison for the protection of those we represent. Be it further

Resolved, That we pledge our moral support to those now on strike for eight (8) hours against the Duplex Printing Press Company, at Battle Creek, Mich., to the end that we do intend, wherever possible to protect the fair employer, but *will prevent if possible, the installation of presses by scab labor, and also use our influence to prevent the placing of orders for presses manufactured under unfair conditions;* and further, that we continue to demand I. A. of M. cards where machinery is being installed or repaired, and that these resolutions be given as much publicity as possible among printing pressmen and printing trades.

The committee recommends concurrence.

President Berry—The International Printing Pressmen and Assistants' Union does not in the adoption of this communication intend to precipitate or participate in any manner whatsoever with the I. A. of M. to boycott or attempt to discriminate against any fair industry. We simply take this position for the purpose of protecting the rights and interests as established by law for the Printing Trades Unions of North America. I make this statement for the rec-

ords and for the advice of the convention. The chair entertains the proposition on the ground that it extends to that point, so that there may be no misunderstanding in the future in the event of the *Duplex Company* attempting to misconstrue the position of the I. P. P. and A. U.

Delegate Mooney—It is giving our moral support to the International Association of Machinists all over the country.

The recommendation of the committee was adopted."

This is the same Mr. Berry that had been writing the complainant (Exhibit 6, fols. 451-454), and the same union which had been working with the machinists against the complainant.

Defendants Neyland and Deering, as well as Vice-President Jennings and Stilgenbauer, went together to the St. Louis conference of the general officers of the International Association of Machinists, which was held in March, 1914 (fol. 126). Their presence at each session of the convention itself is recorded, and there were also present, defendants William Bramley, and J. J. Keppler, who submitted reports, and M. J. Carney, and H. V. Riley, as well as over fifty others (fol. 158).

On March 12th the St. Louis conference of general officers enacted resolutions claiming jurisdiction over the

"making, installing, erecting, maintaining, dismantling, assembling, repairing parts thereof or tools therefor, of all printing and paper-making machinery" (fol. 161).

"Further, that all I. A. of M. representatives when organizing in various localities shall endeavor to attend local Allied Print-

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these resolutions and a copy sent to the Duplex Printing Press Company, of Battle Creek, Mich., and a copy be spread on the minutes of this convention and a copy sent to the American Pressmen for publication.

WEB PRESSMEN'S UNION No. 29,
CINCINNATI, OHIO.

Per W. A. McKay, Delegate."

This resolution was referred to committee on resolutions and passed on the fifth day of the convention.

Another resolution was also passed at the same convention (fols. 195-200), as follows:

"Whereas, The International Association of Machinists is affiliated with the A. F. of L., also with the building, metal, railroad and label departments thereof, and has so changed its laws to bring about closer affiliation of workmen and women engaged in any great industry, to the end that joint action may be brought if necessary; and

Whereas, Machinists, apprentices and helpers, numbering many thousands engaged in the making, erecting, installing, dismantling or repairing of machinery of all descriptions used by printing trades, are organizing this industry for the establishment of the eight (8) hour day, with many employers now operating on the eight (8) hour basis, and to further assist, if necessary, those with whom we come in contact in our daily labor in various printing establishments, and

Whereas, The general trend of labor organizations today is undoubtedly toward

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Resolved, That we, the International Association of Machinists, urge the delegates of the Printing Pressmen and Assistants' Union in convention assembled to endorse this resolution, to the end that we may bring about a condition whereby we may at all times act in unison for the protection of those we represent. Be it further

Resolved, That we pledge our moral support to those now on strike for eight (8) hours against the Duplex Printing Press Company, at Battle Creek, Mich., to the end that we do intend, wherever possible to protect the fair employer, but *will prevent if possible, the installation of presses by scab labor, and also use our influence to prevent the placing of orders for presses manufactured under unfair conditions;* and further, that we continue to demand I. A. of M. cards where machinery is being installed or repaired, and that these resolutions be given as much publicity as possible among printing pressmen and printing trades.

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> "Further, that all I. A. of M. representatives when organizing in various localities shall endeavor to attend local Allied Print-

> ing Trades Council meetings from time to time, urging that members of allied printing trades demand the I. A. of M. due books of machinists who may be installing or repairing machinery; also make it known that our members are on strike for eight hours against the Duplex Printing Press Co. of Battle Creek, Mich., and the Oswego Machine Co. of Oswego, N. Y., builders of paper-cutting machinery, requesting them to assist wherever possible *to prevent installation of this unfair machinery*, and also persuade, if possible, fair employers from letting further contracts for machinery to any of these firms" (fols. 163-164).

The general determination to control construction for the purpose of controlling commerce and unionizing factories appears again and again.

Defendant Keppler refers to the necessity of organizing all of the construction work in order *to control the output of the factories*, "and enable us at most all times to assist in settling our grievances in the shop by our construction machinists refusing to handle or erect unfair machinery" (fol. 177).

On page 29 he proceeds further and says:

> "Can you imagine the contractor or architect allowing their building tied up any length of time without the proper machinery being installed, or the employer, who has already paid for his labor in making the machinery, closing his shop simply because our men would refuse to erect his unfair machinery until he dealt fairly with his shop men? We should also remember that if one job should get away there are many other buildings going up, but if once a machine shop turns scab, it's usually a scab monument a long time unless we can bring some

> pressure to bear on the outside. The trouble has been we have depended on others helping us too much—we must learn to help ourselves. It is very true that all industries will not be directly benefited by getting control of our output, or perhaps there are localities where no such work is being manufactured, but look around your city and see if there is not some such work being installed from time to time that should be done by our members" (fols. 179-180).

Again on March 14th, at this same conference, defendant Keppler points out "the fundamental principles for which our association stands, namely, employment of our members, jurisdiction of work * * * control of our output," etc. (fol. 170), and he further states that the agreement with the Goss Printing Press Company "was only brought about after we were able to prevent installation of their presses on the outside" (fol. 172).

Toward the end of the day of this session of March 14th a formal report is submitted which includes the sub-head of "Printing Presses," and says:

> "In no other way, in the opinion of the writer, than by a strenuous campaign to control the erection of the product of all machine shops throughout our jurisdiction can this situation be changed. It is near time that we realized that the employer can surround himself with enough protection in times of strike to manufacture his product (fol. 185). Would it not be better to fight for the control of the erection of the product of these shops? We have nothing to lose and everything to gain, and we can show that in every case *where we have gained absolute control of the erection there has been no*

> *trouble in organizing and keeping organized the shops where the product was manufactured.* It is a natural conclusion that if the manufacturer knows his product is to be erected by union machinists, he will be careful about having any question arise in the shop that may stop the erection on the job, as it must be put into operation before he gets his pay for his product" (fol. 188).

The evidence contains repeated statements of the defendants made in connection with their specific acts of interference, which we will review, all of which show the comprehensive plan not to allow any workmen to handle, haul, operate or repair a Duplex press, no matter who employed them. It is a kind of bill of attainder passed against a certain species of property, and resulting in strikes among employees of customers, contractors and draymen against whom there is no grievance. It is intended by this plan to make Duplex presses useless, unsalable and unmarketable.

National Exposition Company.

The National Exposition Company, of which Mr. Harry Cochrane was president, held expositions of printing machinery annually in New York City, at the Grand Central Palace, coincident with the conventions of the American Newspaper Publishers' Association and the Associated Press, with a view to bringing the buyers and sellers of presses together in one building at the same time where they could look over the different devices (fols. 314-315). These expositions are based upon these conventions of the business men interested in printing presses, and the first one was held in April, 1913, with 125 exhibitors (fol. 315). The exhibitors employ their

own labor to erect the booths and install their machinery (fol. 316). The Exposition Company was friendly to organized labor and even had defendant Keppler on its advisory staff (fols. 333-334). In December, 1912, complainant entered into a written contract with the National Exposition Company, in which the complainant agreed to exhibit at the exposition to be held in April, 1913 (fol. 316).

The opportunity to exhibit was of great importance, apparently carrying with it large orders, and defendants themselves realized this, for Deering said: "Mr. Stone would get a lot of orders out of this show in New York, enough to keep the factory going for a long time, and he did not want to give him an opportunity to get them unless he unionized the shop" (fol. 332). They, therefore, combined to prevent the advertising or exhibiting of complainant's goods to the public, so that the public would remain ignorant of their desirability.

In April Deering called at Cochrane's office relative to the employment of union labor, and Cochrane told him that the exhibitors were free to employ whom they saw fit and that the Exposition Company had no control over the matter (fol. 317). Deering said there were some exhibitors who did not employ union labor (fol. 318) and that union labor would have to be employed by the various exhibitors; that a strike would be called if union men were not employed by the various exhibitors (fol. 318). As a result of this conversation Cochrane informed the various exhibitors that "they would have to employ union labor in order to avoid trouble" (fol. 318). Just before this exposition of April, 1913, actually opened Deering and Neyland again called on Cochrane when trucks

of exhibits were already arriving (fols. 318-319), and trouble arose concerning the Mergenthaler Company, one of the exhibitors, for employing men who were not members of the Machinists' Union, but were members of Typographical Union (fol. 319). Neyland and Deering said "that members of the Riggers' Union and the International Union would have to be employed or else there would not be anything else unloaded and no machines erected" (fol. 319). The Mergenthaler Company said the machinists were not qualified to do their work, and finally Deering said: "You will have to hire our men whether they can or not or else there will not anything else more be unloaded or there will not be any machinery put up" (fol. 320). Finally the Mergenthaler Company and other exhibitors employed the Machinists' men, who stood around practically idle while the regular men did the work (fols. 321-322). It was understood that the union men so hired "could stand around and draw their breath if they wanted to" (fol. 316). The requirement was that union men be employed in every trade upon the understanding that if any non-union men were employed in any trade all of the trades would be pulled out (fols. 322-323).

After the defendants had established the rule that only union men could be employed, Deering issued the edict that "the Duplex press cannot come in here because there was a fight on between the Machinists and the Duplex Company and for that reason they would not give them any men to put up the exhibit." *Neither would they allow the Duplex men to put up the exhibit, or permit the Exposition Company to hire men for the exhibit* (fol. 323), *because the Duplex Company was on the unfair list and they wanted to unionize it* (fol. 324).

Thus, as in all of these cases, it was not merely a question of the union machinists refusing to handle the product, but a combination to prevent any other employees from doing the work which the union machinists were forbidden to do; a combination not only to boycott their product, but to prevent others from handling it. Young, a union machinist employed by the Duplex Company, had charge of the work for the 1913 exhibition (fol. 224) and was instructed by Deering not to go on with this work until further orders (fols. 210-211, 226). Deering said "he would let me know whether I would be *allowed* to install that machinery or not" (fols. 211, 239). This all happened before any strike was declared in the Duplex factory (fol. 226). Ultimately this exhibit was installed on a Saturday night and Sunday when other men were not working on the building, and the complainant missed the first Saturday night of the exhibition (fol. 324). The installation was done with "the consent and direction of Mr. Keppler" (fol. 226) and apparently for the sole reason that Keppler believed that the complainant had agreed to unionize (fols. 342-343).

The following October the Exposition Company made a similar contract with the complainant for an exposition to be held April 18th to 25th, 1914 (fol. 324; Exhibit 4; fols. 431-439). Again the rule was enforced that only union men were to be employed or all trades would strike. Deering told Cochrane at the beginning: "If you put in any non-union machinists up there, there will be strike and all the union men will walk out" (fol. 337). As a result of this statement Cochrane wrote a letter to all of the exhibitors requesting them to use union help (fol. 329), because he knew "that if any ex-

hibitor employed non-union help in the building that the other union men, irrespective of trade or calling, would cease work" (fol. 339). Again Deering opposed the exhibition of the Duplex press. He said "that the union would not handle their product until they were unionized" (fol. 338). The questions of defendants' counsel absolutely confirm the position "that the machinists would withdraw their labor from the Duplex Company in installing their machines at the exhibit, * * * and that if other men went in that were non-union that the union men in there would discontinue working" (fol. 338).

Deering called on Cochrane several times, and knowing that he was now master of the situation, stated that "the Duplex Company could not exhibit —he would not allow them" (fol. 325). It wasn't a mere statement that labor would be withheld, but was the statement of a man who knew he controlled the situation. The Duplex Company *"could not exhibit"*—that was the ultimatum at all times. The machines *"could not go in"* (fol. 337). He threatened to call a strike of *"all* the union men. He said all the unions were together on it" (fol. 364). Cochrane told him: "I have a contract with them," but Deering said "that would make no difference so far as their position was concerned" (fol. 326). Cochrane appealed to him that rather than have any trouble he would pay for all the union labor that was needed. This was discussed until the question of the Duplex exhibit arose, which prevented any adjustment because Deering "would not agree to let me employ union men for the Duplex Company" (fol. 326). Cochrane asked if he could not employ union men to put in the Duplex exhibit, but Deering replied "he would not furnish any union

men unless the shop was unionized" (fol. 326). He said "that Robert Hoe & Co. and Goss Printing Press Co., who were competitors of the Duplex Company, had put in a complaint to the union that if the Duplex Company was allowed to run open that they were going to break away from the union" (fols. 326-327); "that they had to make good here and enforce the union rule closed shop on Duplex, or else they were going to lose out all along the line" (fols. 327-328). Cochrane said more than once "that if they called a strike and tied up the show, they were going to hurt people like the Dexter Folder and others who are friendly to them and make innocent people suffer on account of this fight with the Duplex" (fol. 328), but Deering replied: "They could not help that because they had to enforce it, because it was their opportunity to get back at Stone, * * * that if he could get away with this exhibit this year he could get away with murder" (fol. 328). Neyland had a personal grudge. He shook his fist and said: "Stone drove my brother out of Battle Creek and prevented him from getting a job and I have a chance to get even with him and I am going to do it" (fol. 355). Neyland and Deering both stated that there was nothing unfair about the show; that they did not think they would do anything about the Oswego Machine Company, another exhibitor who was on their unfair list, but that Stone was the man they were after (fol. 329). Cochrane told him: "You are apt to ruin my business," and they replied "they could not help it." "the only way out of it was to cancel the Duplex contract" (fol. 330), and that "you have got to cancel it or else there will be a strike on this show if they try to put that exhibit in" (fol. 330).

Cochrane asked them if he cancelled the contract "would the machinists' union stand any damages that I might sustain by virtue of the breach in case the Duplex Company sued me" (fol. 331)? Deering replied that he would have to put it up to President Johnston, and while first he considered the expense of defending the Exposition Company in case of suit, he afterwards said that they would not stand anything (fol. 331). He stated that they would notify the Seybold Machine Works and the Dexter Folder Company that they all would be struck if the Duplex Company exhibited (fol. 332). Defendants were afraid the complainant would get large orders if it exhibited and they were going to prevent such a possibility unless the concern unionized (fol. 332). When Cochrane further expostulated on the ruin to his business and the injury to innocent exhibitors, Deering replied: "I cannot help it; I have orders from Johnston at Washington (referring to the International president) and we will pull all the labor union men out if the Duplex is allowed to exhibit" (fol. 332).

Keppler told Cochrane "that the members of the International Association of Machinists could not handle the product of the Duplex Company made under non-union conditions where this strike was on" (fol. 314) "unless the shop was unionized" (fol. 314). When Cochrane agreed to employ whatever number of union men was necessary, Deering stated "that the members of the International Association of Machinists will not be permitted to handle the product of the Duplex Company because of the strike at Battle Creek, Mich., *no matter who wanted them*" (fols. 315-316). Difficulties faced them on all sides. If the press went in the union machinists

would be ordered out on strike; if non-union men were employed to do the work which the union machinists were prevented from doing, the union men in other trades would cease work; it was even threatened to pull out non-union men (fol. 358).

At the very end Deering telephoned the Exposition Company stating that he had received word from the president or vice-president of the International Union at Washington that they would not defend it for breach of contract, and Cochrane told him he could not then cancel the contract, but he hoped they would not call a strike. Deering replied:

> *"He could not help it, although he realized we were innocent parties, he had instructions so that he had to stop the Duplex Company exhibit from going in the show, and would have to stop the Exposition from opening and the Duplex Company from getting any benefit out of it"* (fols. 362 363).

The issuance of a preliminary injunction frustrated the plans of these defendants, but the danger is still present as the Exposition Company is still engaged in the same business (fol. 361).

Italian Herald.

In December, 1913, by written contract, the complainant sold a press to the *Italian Herald*, 28th Street, New York City. Before the press arrived Deering called on the *Italian Herald* and stated:

> "I am informed that the *Italian Herald* signed a contract with the Duplex Company; no right to sign any contract because the Duplex Company is on strike. The *Italian*

> *Herald* knows that the Duplex Company is an open shop and they shall not buy any presses from them. We are informed that part of the press was already shipped to New York, and as soon as the press came to New York, *we will give a trouble for the Italian Herald and the Duplex and we try to make all the trouble possible to the Duplex*" (fols. 312-313).

When the press arrived Deering sent Burkle, one of the union pickets, to the railroad docks to find what car contained the press for the *Italian Herald* (fol. 251).

The work of installation was originally started on Wednesday or Thursday (fol. 298) with one supervising erector employed by the complainant and the other labor employed by the *Italian Herald* (fol. 298). Burkle acted as a picket on the job (fol. 212) and was present when the Britton Trucking Company was told not to handle any more of it and the men quit work (fol. 252). Another truckman finished the job (fol. 272). The labor employed by the customer all quit work (fol. 298). Deering came up to the job and stated "that our men would be taken off the work; and the different members of different building trade unions that were at work on the building would be called off on strike" (fols. 285, 296-298). He himself threatened to do this (fols. 297, 300), and the owner feared "the completion of the building would be held up for two or three weeks" (fol. 296). The owner said the press work could not be done until after the union men in all the other trades "had completed the work on the building and left entirely" (fol. 292), because these other trades would be ordered out on strike on account of the employment of a non-union

man by the *Italian Herald*. The questions of counsel for defendants and the answers establish the allegations of the complainant that if non-union men are employed to install the presses the other trades connected with the building will be called out on strike (fols. 291-293). Because of Deering's threats of disruption the work had to be postponed until Saturday afternoon, all Saturday night and Sunday morning, when the other trades would not be working (fols. 285-287, 292).

By this postponement Deering was eluded, and the following day when he met the complainant's representative he said:

> "You put one over on me this time but you will never do it again and *I am going to make it more and more difficult for the Duplex Printing Press Company to make installations, and will interfere with their work in every way possible. I am very sorry for the salesmen; it is going to be more difficult for the salesmen to get orders for Duplex presses*" (fols. 287-288).

In February, 1914, Young was also supervising the erection of a press for the *Italian Herald* at No. 115 East 28th Street (fol. 212), and when the press was brought up by the truckman Deering told the truckman to quit work. Deering reported to union headquarters that he caught the man delivering it, and the delivery of the press was stopped (fol. 218). Later Deering came to the building on two occasions and told Young that he had "better quit or he would take my card away" (fol. 213). He told Maddock, another mechanic, to get off the work and insinuated that he would have the pressman's card withdrawn (fol. 114), and when Maddock refused he

walked out, saying, "Very well, my laddie" (fol. 114). On the following day, while Maddock and Young were on their way home, they were struck from behind and knocked senseless on the sidewalk about a block away from the building (fols. 214, 416), the usual result of such work of obstruction.

BOLLETINO DELLA SERA.

The complainant by written contract sold a newspaper press to the *Bolletino della Sera*, at 178 Park Row, New York City (Exhibit 5, fols. 440-449), and the work of erection, which commenced in December, 1913, was supervised by Charles Young (fol. 207). Deering told him "not to erect the machinery," and after he started to unload it "ordered the men that were working with me to quit work, which they did" (fol. 207). They stopped at Deering's direction (fol. 233). These men were probably members of the Machinists' Helpers' Union (fol. 208) and were unboxing and cleaning the machinery and carrying it into the building. A half a load of machinery was left on the sidewalk and had to be loaded on the dray again and taken away (fols. 207-208, 235). A day or two later Deering again met Young on the sidewalk and "*he stated he would do everything they could to prevent that machinery going into the Bolletino della Sera, and that he had notified the repair shops in that locality not to do any repairing on that machinery. He also told me that he had heard of one or two breakdowns on Duplex machinery recently, and that there would be more the first of the year*, as they were going to take aggressive action against the Duplex Company" (fols. 208-209); "that there was a prospective

purchaser for Duplex machines in the Bronx, but that he had put a stop to that deal" (fol. 209).

Young particularly requested him to let the press sold to *Bollettino della Sera* be installed, because the machine had not come from the plaintiff directly (fol. 232), but Deering replied that there was a strike against the plaintiff and "the members of the International Association of Machinists would not work upon their production" (fol. 232); that he could not let the members work on the machines "without receiving permission from the International headquarters of the Machinists' Union" (fol. 229).

Nicoletti Bros.

In 1913 the complainant by written contract sold a press to Nicoletti Bros., on Lafayette Street, New York City. In November, 1913, Young received the bill of lading and started to take it to the Britton Trucking Company, when he met Burkle and Soeller, the union pickets and former employees of the plaintiff (fol. 202), and went with them to see Deering at union headquarters (fol. 202). Deering asked Young if he sided with the union or the Duplex Company and Young, who was a member of the Machinists' Union, replied that he sided with the Duplex Company (fol. 203), and he and Burkle and Soeller all agreed that they had been treated fairly by the Duplex Company (fol. 204), and while in its employ had received as high a wage as they had ever received. Deering told Young he did not have to look after the installation of that machine and that he could send word to Mr. Stone, the president of the complainant, that he was afraid to install it. Young replied that this would be un-

true, but Deering stated that he "had good reasons to be afraid to look after the Duplex Printing Press Company's work" (fol. 205). Deering stated that "he would take my card away from me and would blacklist me as a scab all over the East" (fol. 206). He told Young as a member of the union "not to work upon the machinery of the Duplex Company" (fols. 227, 233). He followed Young down to the office of the trucking company without invitation and directed the truckman "not to haul the machinery" (fol. 206); that "it would make trouble" for him if he did (fol. 269). The truckman accordingly refused because Deering "would pull the men off the job" (fol. 269). Burkle and Soeller were appointed by Deering to act as pickets on the Nicoletti job, and tried to get its erector to quit work (fols. 255, 245-246). Burkle heard Deering report at the local lodge concerning the Nicoletti Press "that he got the man delivering it, and the press was stopped" (fol. 247). And it appears that Deering had been up to this job making his usual threats about causing the complainant trouble *on all its work "in this city"* (fol. 281), and tried repeatedly "to call the men off the job of handling the machine" (fol. 281), but had been refused admission to the building (fol. 280). Soeller told Burkle on this occasion that he was to stay away from the job, because "something was going to happen, and that if they got hold of me that I could prove an alibi" (fol. 251).

New York Law Journal.

The *New York Law Journal* purchased a press from the complainant in October, 1913 (fol. 303). Deering called at their place of business in the lat-

ter part of October (fol. 303), and said: "You are going to put in a press next week in here—you have ordered a press. *I will tell you there is a strike on at Battle Creek and you will not be able to have that press hauled to your place * * *. Truckmen and the helpers on these machine-moving trucks are all now in the Machinists' Union and they will not haul any machines * * *. You cannot haul out the machinery, and it is no good to you on account of this strike at Battle Creek*" (fols. 304-305). The press was delivered in January, 1915, and after the men had carried several crates into the building Deering appeared and said: "Here, I told you fellows not to do this; you know you should not do it" (fol. 306). He told the truckmen "to quit the job" and "stopped the job" (fols. 270, 310). The men were employees of the trucking company (fol. 270), and the *Law Journal* man told them "Britton is your boss" (fol. 306). The job was nevertheless stopped, the men quitting work for a little time, but Deering finally let the first load go in (fol. 307). Part of the loads had to be carried away to the stables (fol. 271), but all were finally redelivered. All this disturbance was because of trouble at Battle Creek—a thousand miles away.

On another occasion, when the press for the *New York Law Journal* was being erected, Deering stated

> "*that he was going to do all possible to prevent the wheels of the Law Journal press revolving. If he could help it the press would never be started up in New York City. He said that the unions had unlimited financial means with which they could fight the Duplex Printing Press Company* and which they were to use for that purpose; that eventu-

ally the Duplex Company would have to give in to the union, as other manufacturers had given in to the union" (fol. 289).

PLAINFIELD PRESS.

The *Plainfield Press*, of Plainfield, N. J., purchased a press from the plaintiff in 1912, and was visited by Hugh Riley, of the Machinists' Union (fol. 262), who was also one of those attending the St. Louis conference of the general officers of the Machinists' Union somewhat later (fol. 158). Mr. Riley intimated "that we might have trouble with the union pressmen" on account of the press (fol. 266). The customer replied it was nearly erected, and Riley went down and told the erector he had better quit work; that he had no business erecting that press (fol. 263). As a result of these happenings the *Plainfield Press* declined to consider making further purchases of the complainant, and wrote it a letter on December 31st, 1915, in which it referred to this 1912 trouble, and stated: "We do not care to encounter anything of that kind again. There are a large number of union machinists in this city, and the union is recognized by practically every shop, so that we do not care to run any risks again" (Exhibit 2, fols. 427-430).

The attack is not limited to a refusal to handle Duplex presses, but includes steps to prevent others doing this work which the union machinists are prohibited from doing.

The defendants claim exclusive jurisdiction over the work of installing presses, and will not let any other union men like the pressmen, or any non-union men, do the work if they can help it. They say, in

effect, to the complainant's customers: "Under no circumstances will we allow any but our members to do this kind of work, and in the case of the Duplex presses these members cannot do it; we refuse to allow our members to do the work, and by sympathetic strikes of other trades and other means we will obstruct any attempt to employ other men to do the work which our members are forbidden to do; our aim is to prevent the sale, installation and operation of those presses until the conditions under which they were built at Battle Creek are changed."

The principal means of preventing the employment of non-union men to do the work which union machinists are forbidden to do is through their affiliation with the Building Trades Council, which has a membership of 75,000 from thirty different trades (affiliation and size admitted as alleged in Par. 5, Complaint). These building trades in New York have issued a notice, "To Owners, Architects and Contractors," that "none but members of the International Association of Machinists be employed in the building, assembling, erecting, dismantling or repairing of machinery," and that they must take cognizance of this fact in order to avoid trouble (fols. 166-168). Questions of defendants' counsel and their answers avow and prove "that the machinists would withhold their labor from the Duplex Company in installing their machines * * *, and that if other men went in that were non-union, that the union men in there would discontinue working."

In the case of the *Italian Herald*, also, Deering threatened that the various trades working on the building would quit work on the building (fols.

296-298, 291-293, 285-287). Again, the very questions of defendants' counsel admit and successfully establish the fact that all trades quit if a non-union machinist is employed.

At the expositions in April, 1913 and 1914, it was necessary to employ union men in all trades because of Deering's statement that all union men in all trades would be pulled out by him if any non-union men were employed (fols. 322-323, 337).

They seek control of all the erection work (fols. 169-189), and then use that control against the product of those employers and employees who do not operate according to their dictation. As was said at the St. Louis conference:

> "Where we have gained absolute control of the erection, there has been no trouble in organizing and keeping organized the shops where the product was manufactured" (fol. 188).

Violence.

The atmosphere of violence pervades the case. You cannot ordinarily employ non-union men without meeting interference, violence and threats (fols. 275-277). "They scare other men when they want to work that are not members" (fol. 358). Deering laughingly told Young "he would shoot me" (fol. 211), and that there was reason to be afraid (fol. 205). Burkle was told by Soeller, a fellow-picket, to keep away from the Nicoletti job on a certain day because "something was going to happen, and that if they got hold of me that I could prove an alibi" (fol. 251). He never heard any orders issued for any particular assaults, but heard remarks to the effect that "sometimes a sidewalk would jump

up in the air and hit a fellow in the face" (fol. 260). Both Young and Maddock were knocked unconscious a day after Deering had exhausted his powers of persuasion with them (fols. 214, 416), and Burkle, who was partly on the inside, "was not a bit surprised" (fol. 256). The truckman told in a most natural and spontaneous manner the violence and interference which meets an attempt to employ non-union men (fols. 275-277). These things must be considered when we measure the effects of an organization which seeks to monopolize the construction work and in the same breath refuses to perform it or have anyone else perform it when the complainant's products arrive.

General Boycott Agitation.

There is also a general boycott campaign afoot. Deering says "that there was a prospective purchaser for Duplex machines in the Bronx, but that he had put a stop to that deal" (fol. 209). Similar remarks were made at the time of the *Italian Herald* trouble. He knew of a likely customer who was considering a Duplex press and was "going to try and influence him to place his order elsewhere" (fol. 288). He was sorry for the salesmen, because it was "going to be more difficult for the salesmen to get orders for Duplex presses" (fol. 288). Deering said the company was on the unfair list (fols. 324, 290), and the circulars exhort everybody to try to persuade people not to buy Duplex presses (fols. 152, 147). A greater campaign of unfriendly advertising is contemplated.

> "He said that the machinists' union would probably circularize among all the union members of the different trades that were employed by newspaper publishers, thereby

> influencing these unions to discriminate against the Duplex Printing Press Company's machinery" (fol. 290).

During the erection of the press for the *Italian Herald* Deering "predicted that there would be numerous breakdowns of Duplex Company machinery throughout the country *because we were on the union's unfair list*" (fol. 290). That shows the disastrous effects of this hostile propaganda—it will result in numerous breakdowns. *What stronger reason could there be for enjoining the use of this talismanic word "unfair"?*

The ultimate object of defendants was to unionize the complainant, and the granting of all other demands would not appease them.

Keppler demanded repeatedly and at all times that the factory be unionized (fols. 419, 380-381). All through the record it appears that unionism is the only price of peace (fols. 383-384, 342-343, 312, 324, 273-274, 282, 175, 376). Keppler said again and again that their members could not handle the product of the complainant "unless the shop was unionized" (fols. 344-345). The quarrel was because complainant ran an open shop "* * * and that they would not handle the product until they were unionized" (fol. 338). They even tried to prevent them exhibiting their wares to the public at the National Exhibition unless they would unionize (fols. 332, 326-328, 324). The complainant actually granted the demand as to eight hours, but it did no good (fols. 152-153, 123). Deering said: "They had to make good here and enforce the union closed shop rule on Duplex or else they would lose out all along the line" (fols. 327-328). "If they

organized the plant at Battle Creek, that they would go ahead and handle the Duplex machinery" (fol. 356).

The defendants, acting in part at the instance of complainant's competitors, are engaged in an interstate scheme to protect union manufacturers of printing presses controlling 93 per cent. of the business from the interstate competition of the complainant, the only surviving open shop manufacturer, and to exclude this open shop manufacturer from the field in order to monopolize the business for those who operate according to their terms.

This particular industry is in the hands of four companies—R. Hoe & Company, of New York City; Goss Printing Press Company, of Chicago; Walter Scott & Company, of Plainfield, and the complainant (fols. 373, 408). R. Hoe & Company, the largest of these manufacturers, is ten times the size of the complainant; the Goss Company is twice as large, and the Scott Company is but a little larger (fol. 373). All of these concerns, except the complainant, were unionized within two years prior to the commencement of this suit (fol. 373), and one of the causes of complainant's trouble seems to have been the persistent demand by the complainant's competitors to force the complainant to also unionize or to protect them from the complainant's competition. The complainant, therefore, doing about 7 per cent. of the trade, is opposed by a combination doing 93 per cent. of the trade. Even prior to the strike in August, 1913, defendant Keppler stated

"that R. Hoe & Company, the Goss Company and the Walter Scott Company were in direct competition with us and that they were all unionized; that it was not fair to them that we should be out of the union; that it was their duty to equalize conditions throughout the country in such cases as this and therefore they must insist that we unionize" (fols. 383-384).

When at the very outset Keppler prepared his letter of August 22nd, 1913, in which he frankly states that his general board had instructed him "to prepare for action" (Exhibit 7, fols. 455-471), he mailed it not only to the complainant, but "also to some other employers in this industry" (fol. 112), showing he was working in collusion with them and with their sanction.

At the St. Louis conference in March, 1914, the same idea appears again in Keppler's reports:

"Strikes have also been in progress in this line for some time for eight hour day at the Oswego Machine Co., of Oswego, New York, Duplex P. P. Co., of Battle Creek, Mich.; both had been operating on the ten-hour basis. While conferences are being held with various employers in this industry, the cry of their competitors is continually heard, especially referring to these firms mentioned in the *Organizer* of October 25, 1913. Vice-President Keppler wishes to again call your attention to the fact that a majority of the printing firms in New York City and Plainfield have granted an eight-hour day on the installment plan, and *unless their competitors are brought to the same terms*, we are liable to lose all the conditions we have already gained or face a big strike of printing machinery shops in the spring" (fols. 174-176).

From other reports of Keppler's it appears that the complainant's competitors are instigating this destruction of their rival's business. "He said that *Robert Hoe & Co. and Goss Printing Press Company, who were competitors of the Duplex Company, had put in a complaint to the union that if the Duplex Company was allowed to run open, that they were going to break away from the union*" (fols. 326-327); "that they had to make good here and enforce the union rule closed shop rule on Duplex, or else they were going to lose out all along the line" (fols. 327-328). Neyland and Deering gave as their reason for refusing to allow their members to handle machinery "that if the Duplex Company did not accede to the same conditions as Goss and Hoe, Goss and Hoe would then throw *open* their shops" (fol. 353). In other words, if the Duplex Company did not unionize and run a closed shop they would abandon the closed shop regime and operate an open shop.

It is a boycott and not a strike case, the attack not being limited to complainant's productive organization, but extending to its trade and commerce.

This is not an ordinary labor case in which the defendants have sought to improve their conditions of employment by a strike and incidental picketing against their employer, to which the ordinary rules relative to labor unions are applicable. Such a case involves manufacturing and production, which are the peculiar concern of labor unions. This case relates to trade and commerce.

> "Commerce succeeds to manufacture, and is not a part of it. * * * Manufacture is

transformation, the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incident thereto constitute commerce."

U. S. v. Knight, 156 U. S., 1.

"Here, however, the question concerns not the process of manufacture, but the manufactured product—an article of commerce."

Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U. S., 373.

The attack is upon complainant's *trade and commerce*, and there is not, nor has there been, any strike or discontent among the complainant's employees, except the ordered quitting work on August 27, 1913, of eleven out of 200 in the factory at Battle Creek and three road men erecting presses in different parts of the country. The complainant's productive organization is intact, and there is a harmonious co-partnership between it and its employees, producing goods which are being attacked by union men in the interest of union factories and their employees. If complainant's employees were dissatisfied and had withdrawn from their employment with the complainant, and there was nothing else in the case, it would be a strike case, but since outsiders are trying to attack the trade and commerce being carried on through a harmonious partnership of labor and capital it is a boycott case. This is the distinction which the Trial Judge failed to appreciate when he treated strikes against our customers to destroy our trade, the same as the strike of eleven men at Battle Creek. When employer and employees are working happily together

to such an extent that the workmen refuse all inducements to strike, any further interference with their rights, whether it be violence, intimidation or a boycott of the fruits of their toil, is illegal. If strikers or labor union representatives cannot persuade men to quit work their rights are exhausted and they cannot resort to additional and more drastic methods. A strike is a fight between labor and capital, where labor withdraws from its co-partnership with capital, and such a withdrawal because of dissatisfaction with the terms of the partnership is lawful. But a boycott necessarily implies that the goods are being produced by an existing organization of labor and capital, so that any attack on the goods and the sale of those goods is an attack upon both labor and capital, by union men working in the interest of union employers—and sometimes at their instigation—to prevent the sale of the open shop products and secure a monopoly for the union-made products; it is the open shop employer and his employees on the one side and the union employer and union employees on the other side, and the legality of the combination is not to be tested by the rules applicable to a labor-capital fight where labor merely withdraws from its partnership with capital, but is to be tested by the anti-trust laws which define the lawful methods of competition in the sale and distribution of products.

One of the purposes of the anti-trust laws is to give the public the benefit of free competition, so that all products surviving the battle of fair competition may flow naturally into the public markets of the nation for the selection of consumers. Any artificial or unreasonable obstructions to trade which deprives the public of these advantages necessarily violates the anti-trust laws.

To unduly restrict competition or obstruct the course of trade is injurious to the public because it deprives that public of its inherent right of enjoying the service and the fruits of the service of everybody, and because if the obstruction is successful it keeps goods from the market and restricts the public's right of choice in determining what articles it may purchase. Any combination which, by artificial means, seeks to obstruct the course of trade, is illegal, and only that obstruction is tolerated which is incidental to the ordinary and regular pursuit of a business. The combination in the case at bar and the injury which it has inflicted and threatens to inflict upon the complainant was not incidental to the pursuit of any legitimate business, but had for its sole and direct purpose the suppression of the complainant's competition by erecting an artificial barrier between complainant and its customers and destroying its interstate trade.

The object of the defendants is to prevent the sale and use of machines unless they come from factories operated and exclusively manned by members of the combination and in accordance with methods approved by it. According to the defendants' contentions, and the contentions of the union factories which have conceded their demands, they must protect the union factories from the competition of the open shop factories, because, under the natural laws of trade and competition, the union factories cannot survive with their increased cost of production. Not being able to control the complainant's producing organization at Battle Creek because the employees are contented with their employment, the only possible method by which this could be accomplished is to restrain the trade and commerce of the com-

plainant by making their products unsalable. This is done by calling strikes against their installation, preventing common carriers from hauling them, threatening purchasers with strikes of pressmen, and with the impossibility of operating the presses, causing breakdowns of such presses, preventing their repair, and finally even seeking to suppress their public exhibition and advertisement. If this can be done the barrier between the complainant and the public market will be unsurmountable.

There is no relation between the complainant's factories in Battle Creek and the places where the presses are to be exhibited, hauled, installed or operated, except commerce, so that the only way in which the conditions in the factories can be affected by the conduct of the men at the place of consignment is by controlling commerce. How can the means adopted, viz., refusal to haul, install or operate said machines, accomplish the purpose, viz., of controlling conditions of manufacture in the factories a thousand miles away, except by restraining trade or commerce, and why do the members of this combination adopt this *means* to attain this *end* unless they calculate and intend to restrain trade and commerce? The device is adopted for, and adapted to, the restraint of trade. This is in effect a combination of union factories, with the union employees, to suppress and destroy the interstate trade and competition of the only remaining open shop factory with non-union employees; if it be lawful, then capital has the right to destroy its competitors by instigating organized labor to conduct boycotts against them, for surely organized labor has no greater right to do this on its own initiative for the benefit of the union employer than it has to do it at the instigation of the union employer.

The unreasonableness of this combination and its injury to the public is shown by the manner in which it proceeds. It is not a persuasive appeal to the public to buy union machinery, as in the case of the Consumers' League and the legitimate advertisement of union labels, but is a combination to deprive the public of the opportunity of choice and prevent it from securing the benefits of this improved machinery. The scheme to prevent the presses from being exhibited at the exposition is equivalent to a combination to call strikes against newspapers which advertise some wares which the public requires, or a combination to boycott the dealer who carries hats without the union label. Instead of appealing to public sympathy or choice, it seeks to keep the proscribed goods out of the public reach, so that the public is deprived of its sovereign right of choice—its right of commercial suffrage. The same may be said of strikes against the truckmen and the purchasers of the presses. These are not persuasive appeals to the publishers, but attempts to constrain and coerce them by threats of serious difficulties if they purchase the boycotted material. Such combinations coercing the purchaser deprive the public of the natural opportunities afforded by competition to receive the benefits of improved machinery and are therefore against public policy and violative of public interest. If labor combinations, through the vast economic power which they have developed can dictate to the manufacturer, the mining operator, the railroads, the publishers, and others, that they shall not use a certain improved machine, then the progress of industry is throttled indeed and public interests are set at naught. In this case the combination asserts the right of making a certain product a con-

traband of commerce—a kind of commercial leper; it is to be made worthless, unsalable and unmarketable by preventing its being hauled, installed, operated or even exhibited to the public. If this can be done in the case at bar because the machines are made in Battle Creek, it can be done because some of the metal came from the Calumet and Hecla mines in Michigan; it will permit the institution of strikes on buildings because the metal of the door knobs came from a non-union mine, the wood of the window-frames came from a non-union logging camp, or the stone came from a non-union quarry. It is purely a question as to whether the economic power of these vast labor organizations, when having no other purpose to serve than the suppression of non-union competition, may dictate what shall be transported by a common carrier, what goods shall be advertised, exhibited or sold by our merchants; and what goods shall be purchased or used by manufacturers, publishers, contractors and others requiring the employment of labor in the production of articles for public consumption. Fortunately the law cries a halt far short of what has been done by the defendants in this case, and even the issuance of an unfair list designed to have a large body of customers refuse to patronize a given line of goods constitutes a violation of the Sherman Anti-Trust Law regardless of any coercion against those purchasers or any agreement as to its observance.

POINT I.

The combination violates the Federal Anti-Trust Law and the complainant is entitled to an injunction under the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other unlawful purposes."

The right to work or quit work is no more absolute than any other constitutional right and ceases to be a right when exercised for the purpose of injuring another or accomplishing a result contrary to public policy or restraining trade contrary to law.

Aikens v. *Wisconsin*, 195 U. S., 204.
Gompers v. *Buck's Stove & Range Co.*, 221 U. S., 418.
Hitchman Coal & Coke Co. v. *Mitchell*, 245 U. S., 229.
Paine v. *Neal*, 244 U. S., 459.

"The combination charged falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes."

Loewe v. *Lawlor*, 208 U. S., 274; 235 U. S., 522.
Montague v. *Lowry*, 193 U. S., 38.
Eastern States Lumber Dealers v. *U. S.*, 234 U. S., 600.

U. S. v. *Patten*, 226 U. S., 525.
Standard Oil Co. v. *U. S.*, 221 U. S., 1.
State v. *Duluth Board of Trade*, 121 N. W., 395 (Minn.).

The opinions of all the judges in the Circuit Court of Appeals agree that the combination proven here is indistinguishable in legal principle from that defined in *Loewe* v. *Lawlor* by the last quotation.

A private party is entitled in appropriate cases to an injunction against acts in violation of the Federal Anti-Trust Law. Section 16 of the Clayton Act, which affords that remedy, provides as follows:

> "That any person, firm, corporation or association shall be entitled to sue for, and have injunctive relief, in any court of the United States having jurisdiction over the parties against threatened loss or damage by a violation of the Anti-Trust Laws," etc.

Although the case at bar was commenced before the enactment of the Clayton Act, unlike the *Paine* case the final trial and judgment and some of the acts proved were all subsequent to such enactment. The attorneys for both sides, as well as all of the judges in the two courts which passed upon the case, admit that this act is applicable. Laws of this character are retroactive at least to that extent.

Sampeyreac v. *U. S.*, 7 Peters, 222.
U. S. v. *Schr. Peggy*, 1 Cranch., 105.

In equity even on appeal the Court will take account of a change in the law, refusing to continue

a perpetual injunction properly granted, where a subsequent law makes it no longer proper.

Penn v. *Wheeling Bridge Co.*, 18 How., 421.

All of these points are conceded by the judges of the Circuit Court of Appeals, the decision of the two judges dismissing the case being based solely on the claim that the labor provisions of the Clayton Act have repealed the doctrine of the *Danbury Hatters'* case and legalized the secondary boycott.

These so-called labor provisions are as follows:

"Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from *lawfully* carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

Sec. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employes, or between employers and employes, or between employes, or *between persons employed and persons seeking employment*, involving, or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irrepar-

able injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might *lawfully be done in the absence of such dispute by any party thereto;* nor shall any of the acts specified in this *paragraph* be considered or held to be violations of any law of the United States."

We submit that there is nothing in these sections which legalizes conspiracies or forbids the issuance of injunctions in cases like this, and propose to discuss this question under three heads:

(a) The natural meaning of these sections as found in the language employed and the constitutional difficulties involved in the defendants' contentions.

(b) Decisions construing these sections.

(c) The history of these sections and the evils sought to be remedied thereby.

A.

There is nothing in the act which indicates any intention on the part of Congress to "draw the teeth" of the Anti-Trust Law and everything points to a determination for more stringent enforcement through supplementary legislation. At the very outset all of the anti-trust laws are enumerated and generically described as "anti-trust laws" and this opening paragraph is soon followed by Section 4, which expressly reaffirms the right to sue for treble damages under the original anti-trust law. Section 16 expressly gives the right to injunction against threatened damage by violation of the "*anti-trust law*," which according to the opening paragraph of the act includes the original Sherman Anti-Trust Act of 1890. The original Anti-Trust Act of 1890 is therefore repeatedly reaffirmed. Under such circumstances it is startling to hear the contention that *Loewe* v. *Lawlor*, one of the foremost and most frequently cited decisions under the anti-trust laws and dealing with one of the commonest methods of restraining trade, has been wiped out.

Section 6 declares that the Anti-Trust Law shall not forbid the existence and operation of a labor organization, but there seems to be little claim that

it affords the defendants immunity in a case like this. Even Judge Hough felt "assured of the inapplicability of Section 6." The presence of Section 6, as shown by the history of the legislation, which is later discussed, is due to the fact that it was thought desirable to put at rest the contentions of some that the *mere existence* of labor unions for legitimate purposes was forbidden by the Sherman Anti-Trust Law.

Section 20 has no application to the case. It is limited to litigation "between an employer and employees or between employers and employees, or between employees or between persons employed and persons seeking employment involving or growing out of a dispute concerning terms or conditions of employment." It is obvious that none of the defendants is or has been or probably ever will be an employee of the complainant, whose factories are situated a thousand miles away from the state where the defendants reside. The limitation with which this section commences therefore excludes its application to the case at bar.

As a general proposition even workmen on strike are not "*employees.*"

> *Atchison, T. & S. F. Ry. Co.* v. *Gee*, 139 Fed., 582.
>
> *Knudsen* v. *Benn*, 123 Fed., 636.
>
> *Union Pacific R. R.* v. *Ruef*, 120 Fed., 102.
>
> *Iron Molders* v. *Allis Chalmers*, 166 Fed., 48 (Judge Grosscup's opinion).

It would seem that the word employee implies the existence of a continuing employment relation.

> *Louisville, etc., R. Co.* v. *Wilson*, 138 U. S., 561; 34 L. ed., 1025.

Judge Grosscup's concurring opinion in the *Iron Molders'* case holds that men on strike might still be regarded as having some relationship to their employer, but are not employees. Then surely outside representatives of labor unions, who are professional business agents and not workmen, are not to be construed as employees of a company a thousand miles away. The various acts specified in Section 20, as acts which are not to be enjoined, have some reasonable significance when considered as the acts of employees carried on incidentally with the calling of a strike, but are not acts which can be lawfully and properly carried on by outsiders. If, as Judge Hough holds, the words employer and employee as used in this law include all workmen and industrial managers regardless of the fact that they occupy no employment relation to each other, and like union officers may for the time being hold no employment in any industry, then why did Congress add the words "persons seeking employment" in the opening qualifications of this section?

If this law is given the interpretation called for by the defendants, the phrase "dispute concerning conditions of employment" is also given an unreasonable interpretation and effect. The defendants' contention and the decision of the Circuit Court of Appeals lead to the conclusion that a dispute concerning conditions of employment between the complainant and any one of its employees justifies all of the other so-called employees in the United States, including the 3,000,000 members of the American Federation of Labor, engaging in a conspiracy to prevent the sale of articles made by 99 10 per cent. of the contented employees of the complainant. If, as in this case, the union can create a necessary dispute to legalize its attack by ordering 5 per cent.

of the workmen to quit, they may likewise open the flood gates of destruction against the joint products of the employer and his 99 per cent. contented employees by merely showing that 1 per cent. has responded to its orders.

Under the circumstances surrounding the construction of these provisions a court should not give the words "employer" and "employee" and "dispute" an unusual and distorted meaning when to do so will be contrary to the established judicial definition of these words, will make other words in the statute mere surplusage, and will accomplish an unfair and unfortunate result. In order to invoke whatever limitations of judicial jurisdiction may lurk in Section 20, there must be a suit between employer and employees, etc., involving or growing out of a dispute concerning terms of employment. And it is, of course, obvious that it refers to a dispute between the employers and employees and does not extend any immunity to outsiders or sympathizers. It is particularly imperative that this qualification in the law be given effect, for it is not merely an anti-injunction law, but a declaration of substantive law, closing with the declaration "nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States." Certainly the words "employer" or "employee" or "dispute" should not be extended beyond their natural meaning when to do so will make it operate in derogation of common rights of the particular class of litigants specified.

The intent of Section 20 was to forbid the issuance of injunctions in those cases only, where the acts enumerated in its several clauses would not be "*unlawful* in the *absence of such dispute*," referring,

of course, to a "dispute concerning terms or conditions of employment" between the several classes of persons enumerated in the first sentence of the section. The words "lawfully be done" and "in the absence of such dispute" in the last clause of the sentence apply to, limit and control each of the acts enumerated in the several preceding clauses of it, because the acts specified in the preceding clauses are all included within the words "any act or thing" in the last clause. Here again our contentions are confirmed by the history of the legislation.

It is those acts only which the Federal courts are not to hold or consider to be violations of any law of the United States or to enjoin. The several acts enumerated in the several clauses, if they would be unlawful "in the absence of such dispute," can still be enjoined by the Federal courts, and they can still hold them to be in violation of any statute of the United States which forbids them. Acts which were unlawful before the passage of the Clayton Act are still unlawful under it, because they are unlawful independently of and in the absence of a trade dispute. That is the plain, sensible meaning of this section, resulting from the words used and their arrangement in relation to each other and to the subject, and as we will later show, it is the meaning supported by the history of the legislation.

In other words, in trade dispute cases the presence of a trade dispute shall not itself taint the specified acts with illegality if they are otherwise legal. In determining the lawfulness of the interstate secondary boycott in trade dispute cases, it is necessary to ask whether such a boycott would be lawful in the absence of a trade dispute. The

answer to this question is "certainly not" (*Eastern States Retail Lumber Dealers' Ass'n v. U. S.*, 234 U. S., 600). Since, therefore, the secondary boycott is still unlawful in the absence of a trade dispute, it must likewise be unlawful when connected with a trade dispute. This whole section of the law, as shown by its history, was only intended to put at rest the contentions of labor, fallacious though they were, that the courts discriminated unfairly against lawful acts in trade dispute cases. The secondary boycott therefore remains as unlawful as ever.

It is further obvious that the various acts mentioned in section 20 against which injunctions shall not issue in this limited class of cases are most of them acts which in and of themselves are ordinarily lawful as between an employer and his employees, and that this section accomplishes no other purpose than to declare the previously existing law on this subject. It merely declares that the acts specified *of themselves and by themselves* shall not be held to violate any Federal law, but it does not mean that jurisprudence shall be revolutionized by declaring that such acts may be done with impunity to accomplish criminal purposes. If, as stated by this Court, not even the recognition of a right by the Constitution can justify its exercise in furtherance of a criminal plot (*Gilbert v. Wisconsin*, 195 U. S., 191), and the constitutional privilege of free speech cannot be used as a defense to an injunction which restrains speech or writing, in furtherance of an illegal conspiracy (*Gompers v. Buck Stove & Range Co.*, 221 U. S., 439), then it certainly follows that the recognition of a right by a statute such as the Clayton Act will not justify the exercise of that right in furtherance of a criminal con-

spiracy, which is expressly recognized by the same statute. When these acts are used in furtherance of a criminal plot they become acts of an entirely different character from those described by this section, for they are colored, and their character determined by the illegal plot.

Under any other construction the United States Steel Corporation could destroy its competitors by arrangements with the union, whereby they would call strikes on every railroad, in every factory, and on every building where competitors' products are used, and the whole purpose of the anti-trust legislation would be thus defeated. No civil suit could be maintained in this class of cases under the authority of *Bitterman v. Louisville & Nashville R. R. Co.*, 207 U. S., 205, against parties who induced a breach of contract. Vital provisions of the Interstate Commerce Act (Secs. 7 and 10 as amended, 36 Stat. at Large, p. 548); of the law forbidding the enticement of workmen from U. S. arsenals and armories, R. S. Sec. 668, 35 Stat. at Large, 1097, U. S. Crim. Code 12, Sec. 47; of the law forbidding the enticement of sailors and soldiers, R. S. 1753, 35 Stat. at Large, 1097, Crim. Code, Sec. 42; of the law which forbids deserting the mails, 35 Stat. at Large, 1126, (R. S. 5471, Crim. Code, Sec. 190; of the law against obstructing the mails, R. S. 3995, 35 Stat. at Large, 1127, U. S. Crim. Code 41, Sec. 201; of the law forbidding ferrymen from delaying the mails, R. S., Sec. 3996, 35 Stat. at Large, 1127, U. S. Crim. Code 41, Sec. 202; of the law against obstructing operations of railroads under Federal control, 40 Stat. at Large, page 457, Chap. 25, Sec. 11;—would be *pro tanto* repealed by a construction of the Clayton Act which would legalize the acts specified in Sec-

tion 20, even when exercised for purposes forbidden by these enumerated statutes. Strikes could be called to prevent the carriage of a non-union man to the shop or non-union merchandise to the dealer or consumer, and shippers could thereby be discriminated against in violation of the terms of the Commerce Act. Important cases laying down principles essential for the protection of public interests would be repealed (*Fuhrer* L. L. and N. M. R. R. Co. v. *Penn Co.*, 34 Fed., 738; *In re Debs*, 158 U. S., 383; *Loewe* v. *Lawlor*, 208 U. S., 274; *Gompers* v. *Buck's Stove & Range Co.*, 221 U. S., 418). It would be possible to keep proscribed merchandise out of the reach of the consumers and thereby deprive the public of its right of choice.

To illustrate this point: New York has a statute which makes it a crime to extort graft money by instituting or threatening to institute a strike (*People* v. *Hughes*, 137 N. Y., 29). If New York State were now to pass a law declaring it lawful *for men to strike and to persuade men to quit work in a body, could it be successfully contended that this statute against graft and extortion was nullified to that extent? We think not.* Section 582 of the Penal Law of New York declares that "an orderly and peaceable assembling or co-operation of persons employed in any calling, trade or handicraft, for the purpose of obtaining an advance in the rate of wages or compensation or of maintaining such rate, is not a conspiracy." But in spite of that act it is still the law of New York that certain economic combinations for higher wages on the part of labor, where no violence or disorder is involved, violate the statutory and common law (*Auburn Draying Co.* v. *Wardell*, 227 N. Y., 1; 89 Misc., 501; *People* v. *Davis*, 159 App. Div., 464,

Bakewell v. International Union, 66 Misc., 328).

Physicians could be paid strike benefits as an inducement to quit work in the midst of an operation; engineers could be induced to desert their trains under conditions involving certain loss of life; contracts would become worthless both as between the parties who could quit work regardless of them and as against the intrusion of third parties who could recklessly induce their breach; firemen could go on a strike when a building was burning and life, liberty and property could thus be jeopardized, if laws of this character were to receive the construction contended for.

There is a large volume of statutory and constitutional enactment, both State and Federal, which, like the Clayton Act, expressly sanction many acts relating to liberty and property, but up to the present time it has never been successfully contended that such provisions and the rights which they assert were not subject to, and qualified by, other statutes, whose violation may be accomplished through the performance of such acts. The whole basis of jurisprudence would be altered if it is held that the acts sanctioned in Section 20 of the Clayton Act can always be performed with immunity, regardless of whether their performance is done for lawful or criminal purposes. These activities of labor unions would thus be put on an entirely different basis from the rights of other classes of citizens who are subject to the rule "*Sic utere tuo ut alienum non laedas*"; they would be supreme over all other statutory safeguards or restrictions. All other rules as to torts and crimes would be *pro tanto* annihilated.

The defendants' contention is to the effect that the Clayton Act should be construed to operate *pro*

tanto as an implied repeal of all other constitutional or statutory provisions with which it may by an extended construction be made to collide. Such a result conflicts with the well recognized rule that repeals by implication are not favored. May we not go even further and say that repeals by implication are never to be countenanced when the two laws deal with different subjects?

U. S. v. *Tynen*, 11 Wall., 88.
U. S. v. *Babbitt*, 1 Black., 55.
Arthur v. *Homer*, 96 U. S., 140.
U. S. v. *Greathouse*, 166 U. S., 601.
U. S. v. *Claflin*, 97 U. S., 546.

There is another difficulty in the defendants' contention which in reality amounts to a constitutional obstacle. By their construction Section 20 declares that in *suits between employers and employees*, etc., involving conditions of employment, certain acts which otherwise are a part of the scheme to violate the Federal Anti-Trust Laws shall not be regarded as illegal. There is to be a radical change of law for the benefit of one class of litigants. Under such a construction, if this were a case wherein the plaintiff was suing a competitor who instigated and financed the union in carrying out the very acts which were done, then the complainant could recover. The same would be true if the complainant were a merchant injured by a secondary boycott prosecuted against a manufacturer. In either case it would not be a suit between employers and employees and the complainant could recover. It is only where an employer sues employees, etc., that immunity from certain laws of the United States is to be secured. In other words,

the identical acts would be illegal as between one class of litigants and legal as between another class. Is not a law clearly unconstitutional which provides that in suits between a certain class of litigants, none of the acts specified shall be "considered or held to be violations of any law of the United States"? Here is an improper direction to the judiciary—not declaring that such acts shall be legal when done in furtherance of an industrial dispute—but directing the Courts to declare them legal when a certain class of litigants is before them. If, however, the complainant's construction is adopted, which merely treats this statute as declaratory of the common law, this difficulty disappears.

This law should be construed in accordance with its purpose as shown by its legislative history, which is to end an alleged discrimination against labor and not to create a discrimination in its favor.

It may be contended as against this argument that the test of legality made in Section 20 is not the character of litigants; that the phrase at the end of the paragraph, "nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States," applies to all litigants. If this closing phrase should be regarded as standing by itself unqualified by the opening words of the second paragraph relating to suits between employers and employees, then there would be no form of Federal crime or tort capable of commission by the performance of the acts specified which would not be sanctioned when committed through those acts. Such a construction would be contrary to the decision of the Circuit Court of Appeals for the Second Circuit in the *Lamar* case, and would give this statute the supreme authority

of impairing all other constitutional and statutory provisions, including such war legislation as the Espionage Act, the Sabotage Act, the Food Administration Bill, Lever Act and all military acts, as well as all of the acts already enumerated. The Government itself could not maintain any proceeding, criminal or civil, based on such activities, no matter how many statutes they would otherwise offend.

Altogether the defendants' contended construction meets with difficulties at every angle, and the only reasonable construction is to hold this law as declaratory of the common law and as asserting the legality of these peaceful acts *per se* when not done to attain unlawful ends.

There is still another constitutional objection to the construction contended for by the defendants. While it is true that laborers as "vendors of services" may be properly exempted from the application of such a law when confining themselves to their activities as laborers (*International Harvester Co.* v. *Missouri*, 234 U. S., 199), it does not follow that they can be constitutionally exempted when they attempt to control the sale and distribution of commodities. A valid exemption of labor organizations may be made on the ground that labor occupies a different relation to trade and commerce from that occupied by manufacturers and dealers, but when laborers put aside their peculiar relation to industry, which is the only basis for their exemption, and assert and exercise an interest and control of the same character as is exercised by manufacturers and dealers, then they must be subject to the same law. Laborers engaged in selling products cannot be exempted from the laws ap-

plicable to vendors of products, on the ground that they are laborers, and the same rule applies when, by the use of a trade-mark or union label, they assert an interest in articles of commerce and endeavor to restrain competition in the sale and distribution of competing articles. Any construction of the Clayton Act which would allow a labor union engaged in a manufacturing or mercantile business to escape the operation of this law on the ground that it was a labor organization, would be unconstitutional, and any construction which permitted labor unions to control the sale and distribution of commodities throughout the channels of interstate commerce would likewise make it invalid. In a case where the labor unions joined a combination with manufacturers to restrain interstate commerce it is constitutionally impossible that one should be held innocent and the other guilty. Can it be possible that if the Goss Company and the Hoe Company, competitors of the complainant, instigated this attack against us that they would be liable, while the unions which perpetrated the attack would be exempt? By the fundamental law of conspiracy each conspirator is responsible for all acts done by the other, so that if the employers under the terms of the Sherman Act, are committing a crime in furthering the common design, then the labor unions confederated with the employers must also be liable. By uniting with the employers in furtherance of this design they have eliminated differences between capital and labor which might otherwise permit exemption from this law.

The case of *Cleland* v. *Anderson*, 66 Neb., 252; 92 S. E., 206; 5 L. R. A. (N. S.), 136, was concerned with the construction of an anti-trust law

which exempted organizations of laboring men, and upheld the construction for which we are contending, while at the same time indicating that any other construction would destroy the validity of the statute. Concerning the statute, the Court said:

> "In its letter and spirit it refers only to combinations and conspiracies of persons engaged in the manufacture, sale and transportation of goods, wares and merchandise to prevent or hinder competition and regulate and control prices. No express exception of organizations of laborers intended to maintain or advance wages was necessary to exempt them from the operation. The section in question is inserted rather out of abundance of caution to prevent judicial extension of the terms of the act beyond its scope and purpose, than to grant a privilege or immunity to persons who would otherwise fall within its terms. The distinction between goods and merchandise produced by skill and labor and the skill and labor which produce them, is manifest and reasonable. The statute does not say that laborers who have goods, wares, merchandise, the product of labor, for sale, may combine to advance or control the price, but only that the law designed to prevent combinations in restraint of trade in such articles when produced, shall not be construed to affect organizations formed to regulate the wages or compensation of the labor and skill which produce them."

See, also:

Connolly v. *Union Pipe Co.*, 184 U. S., 540.

From these well-reasoned decisions it would seem to follow that an exemption from the anti-trust

laws extended to any class of people, *purely as a class*, is unconstitutional, if the exemption extends to that class under the identical circumstances where other classes are bound by the law. Laborers may be exempt from certain laws, because of their peculiar relation to the industrial situation, but when they depart from that relation by attempting to control the distribution of products, they come into the same situation as that occupied by merchants and manufacturers, and any law which relieves them from the restrictions of anti-trust statutes to this extent would be unconstitutional.

Moreover, notwithstanding the fact that the Fifth Amendment of the Federal Constitution expressly declares that no person shall be deprived of his property right without due process of law, and Section 2 of Article Three of that Constitution declares that the judicial power shall extend to all cases in law or equity arising under the Constitution and laws made in pursuance thereof, and to controversies between citizens of different states, Section 20, if given the broad interpretation, would deprive the individual owners of property and property rights of all right to resort to the Federal Courts of Equity for protection of the same, when assailed by any or all the acts specifically enumerated therein, by which acts such Courts have uniformly held that property and property rights may be unlawfully injured and destroyed.

A statute forbidding the Courts to issue any restraining order or injunction to prohibit the doing of such enumerated acts, however unlawful they may be, and however necessary such order or injunction may be to preserve the subject-matter of such litigation, would conflict with the statutes creating them and with the general law giving those

Courts equitable jurisdiction over such cases when the matter involved exceeds $5,000 in amount.

Such a law would violate not only the due process clause of the Constitution, but that other clause which declares that the judicial power of Federal Courts of Equity shall extend to all cases and controversies over which, by the statutes of their creation, they are given jurisdiction. For a statute to say that a court shall have equitable jurisdiction over a certain case or controversy, and then for another statute to deny it, the fundamental and essential power to issue and enforce the usual and necessary process required by that jurisdiction would be a direct invasion by Congress of the judicial department and void on that account.

B.

Decisions Affecting the Labor Provisions of the Clayton Act.

The decision of *Paine* v. *Neal*, 244 U. S., 459, supports the right to an injunction under the Clayton Act in a case like this. The final judgment of dismissal in that case was entered below and affirmed by the Circuit Court of Appeals before the Clayton Act was passed and a majority of this Court held that the rights of the parties were, therefore, concluded by the terms of the original Anti-Trust Law, and that no injunction could issue on the complaint of a private party under the original law. But a majority of that Court was also of the opinion that an injunction would issue in such case if the Clayton Act were applicable. In rendering the majority opinion, Justice Holmes, after stating that

an injunction could not issue under the original act, says:

> "Personally I lay those questions on one side because while the act of October 15, 1914, etc., establishes the right of private parties to an injunction in proper cases, in my opinion it also establishes a policy inconsistent with the granting of one here. I do not go into the reasoning which satisfies me because upon this point I am in a minority."

The dissenting opinion clearly holds that an injunction should issue under the Clayton Act.

The case of the *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S., 229, is a decision in favor of the plaintiff. The injunction in that case could not have been sustained without supporting the construction of the Clayton Act for which we contend, since the very acts enjoined were of the nature which our adversaries claim may not be enjoined under Section 20 of that act. The fact that judgment had been entered in that case prior to the enactment of the Clayton Act is immaterial, as this Court, in passing upon the validity of an injunction in perpetuity takes account of subsequent legislation (*Penn.* v. *Wheeling Bridge Co.*, 18 How., 421, 431). This point was made clear by the Circuit Court of Appeals for the Ninth Circuit in the case of *Montgomery* v. *Pacific Ry. Co.*, 258 Fed., 383, where on page 338 the Court held that the defendants' contention in that case to the effect that the decision in the *Hitchman* case was based "upon the condition of the law existing at the time of its commencement and not upon the condition existing at the time of the decision, is wholly unsound. The exact reverse is manifestly untrue." The Court accord-

ingly sustained an injunction against labor in that case, which thoroughly supports our contentions.

In the case of *U. S.* v. *Rintelen*, 233 Fed., 793, 799, Judge Wolverton had before him this very question in a case where strikes were being instigated by peaceful means to prevent the exportation of munitions to the Allies. Judge Wolverton held that the combination violated the Federal Anti-Trust Law, and said:

> "It is suggested that some of the alleged means employed or to be employed, are sanctioned as lawful by the Clayton Act. But this does not help the defendants as a combination to effect an unlawful object through lawful means may constitute a conspiracy nevertheless."

The decision of the Circuit Court of Appeals on writ of error in the *Rintelen* case (*Lamar* v. *U. S.*, Fed., , certiorari refused by this Court), which is difficult to reconcile with its decision in the case at bar, deals with this same question as follows:

> "It is further contended that assuming everything covered by the evidence as proven, and all the legal rules above adverted to as correct, it still remains true that the only suggested means or method of restraining trade was to strike,—to induce laborers to peacefully quit work; and such acts are lawful under the statute of October 15, 1914, commonly known as the Clayton Act. It is said to follow that if doing this unlawful act should produce restraint of trade, the later statute prevents the operation of the earlier.
>
> Whether the Clayton Act has to the extent indicated nullified the Sherman Act, is a question that need not be discussed, but we

do hold it as clear that no change has been wrought in the law of conspiracy as applicable to this case.

It may be that where the intent of those who foment strikes, or themselves quit work after and as a result of agreement with their fellow-workmen, is to advance their own wage interests, or otherwise improve their conditions of life,—the Clayton Act produces legality by forbidding legal interference with their doings. This may be admitted for argument's sake, without expressing opinion. But we do hold that where it is charged (as here) that the intent was solely to restrain foreign trade, and where it is proved (as here) that the proposed instigation of strikes bore no relation whatever to the welfare of the strikers, then at most and best, the strike becomes nothing more than an instrument or means, legal in itself, but used only for an illegal end.

The argument for plaintiffs in error confounds the means with the end. The end or object of the proven conspiracy was not to call strikes, but to restrain or rather suppress foreign trade. *That object is as illegal as ever, the Clayton Act assuredly does not legalize it.* If that be granted, the elementary rules of law apply, and legality of means cannot excuse illegality of purpose or object."

In the case of *Alaska* v. *International Longshoremen's Union*, 236 Fed., 961, it was held that the rights or privileges given by Section 20 of the Clayton Act would have to be considered as qualified by the Interstate Commerce Act, and we see no reason why the same argument would not apply to the original Anti-Trust Act, which is in terms reaffirmed by the Clayton Act.

In the case of *The Pacific Coastal Trades Council v. American Steel Foundries*, 238 Fed., 728, which was decided over two years after the Clayton Act, the Court said:

> "Plaintiff's contention that a Court may restrain lawful acts of striking employees when committed and carried out the purpose of an unlawful conspiracy to destroy the employer's business, is supported by many authorities (156 Fed., 750; 158 U. S., 564; 252 Ill., 124; 165 Ind., 521). * * * If the purposes of the undertaking complained of were purely and simply or even primarily interference with the plaintiff in the control of its business as alleged, an act, however innocent in itself, directed to that end can be said to have a lawful purpose for its object."

In the case of *U. S. v. King*, 229 Fed., 505, it was urged that the association of the defendants was an agricultural association within the meaning of Section 6 of the Clayton Act, but the Court said:

> "Even if it were so I do not think that the coercion of outsiders by a secondary boycott which was discussed in my opinion on the former indictment, can be held to be a lawful carrying out of the legitimate objects of such an association. That act means, as I understand it, that organizations such as it describes are not to be dissolved and broken up as illegal nor held to be combinations or conspiracies in restraint of trade, but they are not privileged to adopt methods of carrying on their business which are not permitted to other lawful associations."

See also:

U. S. v. King, 229 Fed., 275.

In the case of *Stephens v. Ohio State Telephone Co.*, 240 Fed., 758, Judge Killits, speaking of Section 20 of the Clayton Act, says:

> "The statute but enacted the position which courts had universally taken; there is nothing new in it," etc.

In the case of *Hood v. United Mine Workers*, 235 Fed., 1 (*United Mine Workers v. Coronado Co.*, 259 Fed., 899), a careful reading of the complaint, which is set forth at the end of the opinion, will show that the decision is based upon the theory that the Clayton Act has not changed the Anti-Trust Law in its application to labor unions so far as the substantive law is concerned. The opinion cites both of the decisions in *Loewe v. Lawlor* and reaches the conclusion, without referring to the question of violence, that the case falls within the class of restraints aimed at compelling third parties involuntarily not to engage in the course of interstate trade except on conditions that the combination imposes.

The decisions of the lower courts in the case at bar seem to be the only ones upholding the defendants' contentions, while there are a number of decisions, as indicated, both in this and inferior courts, which conflict with any such conclusion.

C.

History of the Labor Sections of the Clayton Act.

Judge Hough, speaking in behalf of the Circuit Court of Appeals, held that "in so far as courts are permitted to study legislative proceedings and contemporary history for aid in statutory interpre-

tation we consider it plain that the designed, announced, and widely known purposes of Section 20 (perhaps in conjunction with Section 6) was to legalize the secondary boycott. At least in so far as it rests on or consists of refusing to work for anyone who deals with the principal offender."

This statement of the Court, which constituted at least one of the principal reasons for its conclusion, is contrary to the actual facts as disclosed by the history of this legislation, the evil sought to be remedied thereby, and the acts and declarations of those who have a responsible part in its enactment.

When a statute not clear on its face is to be interpreted courts will consult legislative debates, reports and contemporaneous history for expressions indicating the intentions of the legislative body.

Tap Line R. R. Cases, 234 U. S., 27.

Why was it thought necessary or advisable to enact this section? It was because the leaders of organized labor had been asserting for years that a different rule of law was applied in the suits enumerated in the first sentence of Section 20 than in other suits, that acts which would be held innocent in any other case were held unlawful in such cases, and that they were discriminated against thereby. They had filled the whole country with their complaints. Whether they really believed this to be true or not it would take an expert in psychiatry to decide, but by incessantly and constantly asserting it they led a great many others, including some senators and members of Congress, to believe it to be true, and had thereby created a great prejudice against the Federal courts in a large section of the public mind.

In response to this propaganda several bills were introduced (in the Fifty-second Congress, H. R. 6640, Sec. 1; Fifty-sixth Congress, Senate 1,546, Sec. 8; H. R. 10,539, Sec. 7; Fifty-sixth Congress, H. R. 11,667, Sec. 7; Fifty-seventh Congress, Senate 649, Sec. 7; H. R. 14,947, Sec. 7;) *to amend the Sherman Anti-Trust Law so that it would not apply to labor organizations, and while one of these (H. R. 10,539, Sec. 7) passed the House in the Fifty-sixth Congress, none ever became a law. In February, 1908, Chief Justice Fuller, delivering the unanimous opinion of the Court in Loewe v. Lawlor,* 208 U. S., 291, had said:

> "Nor can the act in question be held inapplicable because defendants were not themselves engaged in interstate commerce. The act made no distinction between classes. It provided that 'every' contract, combination or conspiracy in restraint of trade was illegal. The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act and that all these efforts failed, so that the act remained as we have it before us."

Session after session, before and after the decision in *Loewe v. Lawlor*, the labor unions had gone to Congress with their complaints against what they declared to be alleged discrimination and had demanded the removal of this discrimination by legislation which would relieve them from the operation of the law. They had frequented the halls of national conventions of all parties, demanding that this complaint be made an issue of campaigns for the election of presidents, senators and congressmen. Finally the Democratic Party in its national conventions of 1908 and 1912 inserted a clause rela-

tive to this complaint in its national platform by the following plank:

> "Questions of judicial practice have arisen especially in connection with industrial disputes. We believe that the parties to all judicial proceedings should be treated with rigid impartiality and that *injunctions should not issue in any cases in which injunctions would not issue if no industrial dispute were involved.*"

This plank originated in no hostility to or lack of respect for the courts, nor in any desire to cripple them. For the convention took the pains to further declare in connection with it:

> "The courts of justice are the bulwark of our liberty and we yield to none in our purpose to maintain their dignity. Our party has given to the bench a long line of distinguished judges, who have added to the respect and confidence in which this department must be jealously maintained. We resent the attempt of the Republican party to raise false issues respecting the judiciary. It is an unjust reflection upon a great body of our citizens to assume that they lack respect for the courts."

This plank is the pole star by which we should be guided in construing Section 20 of the Clayton Act, for its authors declared again and again that they were carrying it into effect by the language which they employed.

There is no mistaking its meaning. "Questions of *judicial practice* have arisen, *especially in connection with industrial disputes.* Parties to *all* judicial proceedings should be treated with rigid impartiality. Injunctions should not issue *in any cases* in which injunctions would not issue, if *no*

industrial dispute were involved." It was such a declaration as was to be expected from the national convention of a party, whose founder had said in his first inaugural address, "It is proper you should understand what I deem the essential principles of our government, and consequently those which ought to shape its administration, *equal and exact justice to all men of whatever state,* or persuasion religious or political; * * *. These principles should be the creed of our political faith, the text of civic instruction."

Its complaint was not of *unequal or unjust laws,* but of the unequal *administration of those laws by the courts.* No change in the *substantive law* was recommended or suggested. It was the *practice and procedure* of the courts which was to be corrected, so that the same practice and legal construction and remedies should be applied in all suits, whether they grew out of industrial disputes or not. All parties to suits were to be under the same laws, all were to be treated alike in the courts, all were to have the same remedies. It sanctioned no proposal to exempt certain classes from the operation of the law while others were included; to punish one and release another for the same act; to say that all are not equal before the law. Especially did it not suggest or express any intent that the laws should be so changed as to render workmen pariahs or slaves and employers bankrupts or commercial slaves.

During this same period the leaders of organized labor also set up the claim that under the *Hatters'* decision labor unions *per se* were unlawful combinations in restraint of trade, irrespective of what their practices might be, and they demanded legislation to correct the law as so laid down by

this Court. They further claimed that when the Sherman Law was enacted in 1890 it was never intended "*to apply*" in any way to labor unions and their practices, notwithstanding the decision of this Court to the contrary, and they demanded that the Sherman Act be amended accordingly. Upon these points they also went to the national conventions of all the political parties and demanded the insertion in their platforms of a plank, directing that labor unions be exempted in all respects from the operation of the Sherman Act.

The Democratic national convention thereupon, in its platforms of 1908 and 1912, inserted in its platform the following plank, embodying only the first demand:

> "The expanding organization of industry makes it essential that there be no abridgment of the right of wage-earners and producers *to organize* for the protection of wages and the improvement of labor conditions, to the end that *such labor organizations shall not be regarded as illegal combinations in restraint of trade.*"

With these planks in its platform the Democratic Party was successful in 1912, and in 1913 it came into full control of both the executive and legislative branches of the Government. In course of time the judiciary committees of both Houses in succession reported the Clayton Act (House Rep. No. 627, 63rd Cong., 2nd Sess., pp. 2, 14-16; Senate Rep. No. 698, 63rd Cong., 2nd Sess., pp. 1, 10, 46).

The Senate Judiciary Committee in its report said:

> "It is well, at the outset, to state the theory of the bill, both as it passed the House of Representatives and as it is proposed to be

> amended, for the general scope of the House measure is unchanged. It is not proposed by the bill or amendments to alter, amend or change in any respect, the original Sherman Anti-Trust Act of July 2, 1890. The purpose is only to supplement that Act and the other Anti-Trust Acts referred to in Section 1 of the bill."

And the Senate Committee also quoted from the report of the House Committee to the same effect, as follows:

> "The bill does not interfere with the Sherman Anti-Trust Act at all; it leaves the law of conspiracy untouched and it is not open to effective criticism on any constitutional ground."

The opening sentence of Section 20, which specifies the classes of cases to which its subsequent provisions apply, was adopted verbatim, with one momentous alteration, from the first section of the famous Pearre Bill, which was first introduced in the 59th Congress in April, 1906, and in every succeeding congress, including the 63rd, and was the subject of frequent debates at every session. In the Pearre Bill the language was as follows:

> "Be it enacted, etc. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and an employee, or between employers and employees, or between employees, or between persons employed to labor and persons seeking employment as laborers, or between persons seeking employment as laborers, *or* involving or growing out of a dispute concerning terms or conditions of employment unless necessary to prevent irreparable injury to property or property rights," etc.

In the opening sentence of Section 20 of the Clayton Act this language was changed by the omission of the word "*or*" between the words "employment" and "involving or growing out of a dispute concerning terms or conditions of employment," so that Section 20 of the Clayton Act reads thus:

> "That no restraining order or injunction shall be granted by any court of the United States or a judge or the judges thereof *in any case between* an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, *involving or growing out of a dispute concerning terms or conditions of employment*, unless necessary to prevent irreparable injury to property or to a property right," etc.

The effect of this change in the scope of the provision, by the omission of the word "or," was repeatedly pointed out in the debates, and it was often asserted and never denied that the effect and intent of the change was to confine the operation of the provisions of the section, precisely as Judge Hough says they would be confined, if the narrow construction which he rejected was adopted (see the acute discussions in the House debates on this paragraph of the change in the meaning and scope of this Section 20, then Section 18 of the bill, by the omission from it of the word "or" [Cong. Rec., Vol. 51, Pt. 10, pp. 9,651-9,658, 63rd Cong., 2nd Sess.]). For instance, Congressman Madden, of Illinois, in discussing the matter, said (Cong. Rec., Vol. 51, Pt. 17, Appendix, p. 942, 63rd Cong., 2nd Sess.):

> "But anyone can see the wide range of cases covered by the clause 'or involving or

growing out of a dispute,' and so forth, and can also see the far-reaching effect of omitting in this Section 20 the words 'or,' with which it is introduced. The effect is to change the clause from a provision creating an almost limitless class of cases which the exemption from injunction process would have embraced, to a clause qualifying a class of cases which was already almost purely theoretical and speculative. The Section as enacted can never be available or afford any relief after the relation of employer and employes has been severed or terminated by a strike or lockout, and it is then, if ever, that protection against arbitrary injunctive and restraining orders is needed. No one ever heard of the power of the court being invoked to protect by injunction anyone against another prior to the severance of relations, nor did anyone ever hear of employers or persons out of employment, or seeking employment, applying for an injunction against each other. Much less are any of those holding such relations or seeking employment ever likely to apply for an injunction to protect property or property rights, and each of these phases or elements must be present as conditions precedent to the operation of the prohibition against use of injunctive process as found in Section 20. In other words, no area or space of jurisdiction is covered by it for any practicable purpose when the limitations are considered and given effect."

The intent of these sections in the opinion of the President of the United States, who signed the act, and by his approval made it a law, was *announced* at the time by him through the press and by it spread broadcast throughout the country and widely read in every hamlet (Cong. Rec., Vol. 51, Pt. 10,

pp. 9,592, 9,593, 63rd Cong., 2nd Sess., June 1st, 1914).

Mr. Thompson of Oklahoma made this clear in the following:

> "Mr. Chairman, I voted for the Thomas amendment this afternoon to the anti-trust act, and I want to call attention to the report that is carried this afternoon in the *Evening Star* of an interview with the President which confirms me in the view that I took at the time when I voted for the Thomas amendment. I did not believe that the Webb amendment was broad enough to exempt labor and farmers' organizations from the terms of the anti-trust act. The *Star* carries this report, in talking about its interview with the President:
>
> > 'He was asked numerous questions as to pending legislation and especially as to the amendments to the Clayton bill touching upon the exemption of labor unions from the operation of the Sherman Anti-Trust Law. *He does not believe that the amendments agreed upon by the administration and Congress give the exemptions mentioned. On the contrary, he thinks that there is no more immunity for labor and farmers' organizations as far as violations of the law are concerned, than any corporation or other organization.*"

The amendments "*agreed upon by the administration and Congress*" mentioned in the above interview, were the two amendments offered by Mr. Webb, Chairman of the Judiciary Committee, in its behalf, and adopted by the House on June 1, 1914, and June 2, 1914, respectively (Cong. Rec., Vol. 51, Pt. 10, pp. 9,566 and 9,662, 63rd Cong., 2nd Sess.).

The first amendment was to add at the end of Section 7 (now Section 6) the words, "nor shall such organizations or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws." And the second amendment was to add to Section 20 (then Section 18) the words, "nor shall any of the acts specified in this paragraph be considered or held to be unlawful."

When the bill was before the House, Mr. Webb, Chairman of the Judiciary Committee, and in charge of the bill, speaking for the Committee, declared over and over again in the debate on Section 20 (then Section 18) that it was not intended to, and in the opinion of the Committee did not, legalize the secondary boycott. For instance (Cong. Rec., Vol. 51, Pt. 10, pp. 9,652, 9,653, 9,658, 63rd Cong., 2nd Sess.), when speaking for the Committee, he discussed the effect of the words "nor shall any of the acts specified in this paragraph be considered or held unlawful," upon the preceding clauses of the paragraph he was asked this question by Mr. Volstead:

> "Mr. Volstead: Would not this also legalize the secondary boycott * * *. Can there be any doubt this is intended or does, in fact, *legalize the secondary boycott?*
>
> Mr. Webb: I will say frankly to my friend, when this section was drawn, it was drawn with the careful purpose *not to legalize the secondary boycott, and we do not think it does.* There may be a difference of opinion about it, but *it is the opinion of the committee* that it does not legalize the secondary boycott and is not intended to do so. * * *
>
> Mr. Towner: Is it not true, I will ask the gentleman, if these statements, every one

of them contained in this paragraph of this section, have been time and time again declared by the supreme courts of the United States not to be illegal or unlawful acts?

Mr. Webb: Not time and time again by the Supreme Court of the United States, but time and time again by various inferior federal courts and the Supreme Court.

Mr. Towner: By the supreme courts, I said.

Mr. Webb: Mr. Chairman, we are frank to say in our opinion *everything set forth in Section 18 is the law to-day.*

Mr. Volstead: But would the gentleman be willing to accept an amendment which would expressly exclude the secondary boycott?

Mr. Webb: Well, with our present view and understanding of the section we feel it is not necessary to accept such amendment. • • • I will say this section was drawn two years or more ago and was drawn carefully, and those who drew this section drew it with the idea of excluding the secondary boycott. It passed the House, I think, by about 213 to 16 and the question of the secondary boycott was not raised then because we understood so clearly *it did not refer to or authorize the secondary boycott.* • • •

I say again—and I speak for, I believe, practically every member of the House Judiciary Committee—that if this Section did legalize the secondary boycott *there would not be a man vote for it. It is not the purpose of the committee to authorize it, and I do not think any person in this House wants to do it.*"

Mr. Henry, of Texas, immediately followed Mr. Webb and gave this account of the genesis of the amendment which Mr. Webb had offered and ex-

plained (Cong. Rec., Vol. 51, Pt. 10, p. 9,653, 63rd Cong., 2nd Sess.):

"Mr. Henry: Mr. Chairman, I regard this as a very important amendment. Section 18 may be truly regarded as a bill of rights for the labor organizations. This bill was passed through the House before. This section as a separate bill was held up in the Senate. I am glad we are now about to make it a part of the anti-trust program.

Some of us, after reading this section in connection with the other provisions of the general bill, did not believe that it was quite explicit, and that there ought to be some additions to Section 18. So, on the evening of May 21 of this year, Mr. Kitchin, of North Carolina; Mr. Towner; Mr. Hinebaugh, of Illinois; Mr. Graham, of Illinois; Mr. Lewis, of Maryland; and myself met in the room of the Committee on Rules for the purpose of examining this section and certain other sections of the bill, and we came to the conclusion that this amendment which has been offered by Mr. Webb, and accepted by the Committee on the Judiciary, should be made a part of the bill.

On that evening we formulated this amendment exactly as it has been tendered, and on Sunday morning submitted it to the American Federation of Labor, because we did not want any misunderstanding about this question. We believed that we ought to make its history clear; that there ought not hereafter to be any cloudy or foggy history as there was after the Sherman Anti-trust law was passed. So in connection with the amendment which was agreed to as a part of Section 7, this amendment was agreed to, and we asked the officers of the American Federation of Labor to submit this amendment to their counsel in order that we might

clearly understand it and cooperate with them.

They did so, and they have agreed that this amendment is appropriate and indeed necessary; and we concur with them and the *President and the Committee on the Judiciary has concurred with them, and for a very good reason.* Section 18, as originally drawn in connection with the other parts of this bill should be amended in this respect.

Section 18, in connection with other parts of the bill, only referred to the *equity powers of the courts*, and we thought that it ought to go further, and that there should be an amendment saying that the things mentioned in Section 18, if they were done should not *be illegal*, not only as far as the equity courts were concerned, but that *no court* should be able to lay its hands upon the members of the organizations *touching the rights* guaranteed in Section 18.

Mr. Graham of Pennsylvania: I understand the gentleman to say that this has been submitted to the Committee on the Judiciary and approved by it. If so, I would like to know when and under what circumstances?

Mr. Henry: I presume it was. It was submitted to the subcommittee. I have not been in attendance on the meetings of the committee, but suppose it was submitted to the members of the general committee. But this amendment is satisfactory to the American Federation of Labor; *it is satisfactory to the President of the United States;* and was and is *satisfactory to the chairman of the Committee on the Judiciary* and the members thereof with whom I have talked; and it ought to be added at the end of Section 18 so as to preserve, protect, and perpetuate the rights that are given to labor organizations in Section 18, and not only

> prohibit *courts of equity* from violating *those rights* but also restrain the *courts of law* from undoing any of those things that we have guaranteed in this section.
>
> * * * * * *
>
> I am not going into any controversy with them; but the fact remains that the Judiciary Committee had drawn their sections, 7 and 18, and they were not satisfactory, and we were trying to get together with the Judiciary Committee and shape up this matter so as to prove our friendship for the labor portions of this country and *carry out our platform demands.*"

Those "platform demands" were "that *all parties to all proceedings should be treated with rigid impartiality*, and that injunctions should not issue in any cases in which injunctions would not issue if *no industrial dispute were involved.*" No attempt or suggestion was made by Mr. Henry or anyone else in the House or Senate to remove the limitations on "the acts specified in this paragraph," which had been so studiously inserted to make the prohibitions of the section accurately express and conform to the purpose of the platform demands, to wit, "*acts which might lawfully be done in the absence of such dispute by any party thereto.*" The section passed the House with these qualifying words in it, with Mr. Henry's amendment tacked on, and was referred to the Senate Judiciary Committee.

But there was a dead fly in the ointment and the able lawyers on the committee soon detected its presence. It grew out of the use of the word "unlawful" in the very amendment which Mr. Henry had worked day and night and Sunday to frame and put through in order to perfectly clarify this

section for all time. It was found that, instead, he had hopelessly muddled the whole business. They perceived that under our dual form of government the power to declare lawful or unlawful the acts "specified in this paragraph" in most instances rested with the states and not with Congress, and that the Federal courts, both of equity and law, sit to administer the State laws as well as the Federal laws in all cases of which they have jurisdiction. The effect of the word "unlawful" in the amendment, therefore, was that Congress was ordering the Federal courts of law and equity to construe the state laws according to its direction. They therefore reported the section with an amendment, striking out the word "unlawful" and inserting in place of it the words "violations of the anti-trust laws," which was changed in the Senate to "violations of any law of the United States," and so it stands in the section today.

While the bill was before the Senate, after the Senate Judiciary Committee had reported amendments to it, designed as they said in their report to emphasize the fact that it was not intended to make anything legal which was illegal before, but to merely codify the law, Mr. Hughes, of New Jersey, a member of labor unions and their recognized champion in the Senate, said this (Cong. Rec., Vol. 51, Pt. 11, p. 13,977, 63rd Cong., 2nd Sess.):

> "Mr. Hughes: I have said a good deal more than I intended to say, Mr. President. I think this is a timely compliance with the just and reasonable demands of the laboring people of this country. *In my judgment there is nothing in this section which justifies the secondary boycott or a boycott of any kind.* It simply makes legal that which we

all have been taught to believe was legal. It simply interposes the barrier of the arm of this law before an unfriendly Attorney General, who might with great reason and force, it seems to me, go into a court of equity and dissolve by injunction every organization of railroad trainmen, firemen or engineers who were organized for the purpose of simultaneously ceasing their employment whenever necessary to enforce their demands. That is all it does in my opinion."

Senator Jones, of Washington, in the course of a very strong speech in support of the bill, explained the purpose and effect of the measure as follows (Cong. Rec., Vol. 51, Pt. 14, pp. 14,011, 14,013, 14,014, 63rd Cong., 2nd Sess.):

"Mr. Jones: Mr. President, I have received hundreds of telegrams of the following tenor:

'We earnestly protest against the passage of that section of the Clayton bill exempting labor and agricultural organizations from the provisions of the Sherman law. Such exemptions we deem class legislation of the rankest kind. We therefore hope that you will use your best efforts to defeat the same.'

I have also received hundreds of telegrams of this effect:

'The tenth convention of District No. 10, United Mine Workers, assembled in Seattle, request the passage by the senate of the Clayton House resolution exempting farmers and labor organizations from the operation of the Sherman anti-trust law.'

Those who send these telegrams believe that section 7 of this proposed law exempts

farmers' and laborers' organizations from prosecutions under the Sherman law for acts done in undue restraint of interstate commerce. Both are mistaken. It does nothing of the kind, and when the section is clearly understood there will be no objection to it anywhere in the country, in my judgment, unless the members of the organizations referred to should object to it on the ground that it does not go far enough. Those who so violently oppose it will see that it does not at all do what they think it does. Those who favor it may find that it does not go nearly so far as they believe or desire.

It is unfortunate that in the discussion of cases arising under the Sherman Anti-trust Act many misstatements have been made, and the effect of decisions has been misrepresented either intentionally or ignorantly and carelessly. This has given rise to much misapprehension as to the effect of and operation of this law regarding labor and farmer organizations. Many misstatements have been so often repeated as to be accepted as facts. Prosecutions for acts done outside of the objects and purposes of such organizations and in a manner contrary to the legitimate purposes thereof have led to charges and misstatements that prosecutions have been made against these organizations as such, and that their legitimate objects have been interfered with. This has been done so persistently that the members of these organizations have come to believe that their organizations, as such, have come under the ban of the Sherman law, and that the courts have without warrant held them to be contrary to that law. This has led others very naturally to conclude that legislation urged by such organizations and proposed in their behalf is intended to give to such organizations and their members some

special privileges, and to permit them to do and commit acts contrary to that law, and they have very naturally concluded that this proposed law does this. They have concluded that this legislation will make legal certain acts done by these organizations which if done by other organizations or persons would be illegal. The courts have not held these organizations illegal; they have not held that the mere fact of the existence of such organizations showed that the Sherman law had been violated. Some isolated cases in inferior courts may have gone this far, but no authoritative court has done so. On the contrary, the courts of last resort have uniformly held that such organizations are not in themselves illegal, but are entirely lawful. In my judgment, the criticism that has been leveled at the courts for holding such organizations to come within the terms of the Sherman law when acts have been committed in undue restraint of interstate commerce has been most unjust.

* * * * * *

Sec. 7 of the bill before us reads as follows:

'Sec. 7. That nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations instituted for the purposes of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust law.'

Those really interested in this provision are the labor organizations of the country. They want it; they believe they ought to have it; they believe they need it. This is not class legislation. It does not permit labor to restrain trade or commerce while prohibiting others from doing it. Capital can combine; it can and does organize now, and no one complains unless it does actually restrain trade, and often not then. A mere commercial combination may in itself be a restraint of trade, and therefore in violation of the law and its continuance a continued violation of the law. An association or organization of laborers cannot in and of itself be a restraint of trade. It is not a combination or association of anything entering into trade and commerce. Trade and commerce are made up of articles or commodities; not of labor, but the products of labor. Combinations of capital control commodities or the instruments of commerce; combinations of labor are simply the association of human beings. Legislation for the regulation and control of the one may be no more suitable for the regulation of the other than would legislation for the control of a flying machine be suitable for the control of railroad trains.

In my judgment, this provision does not give to labor a single right that it does not now possess. This provision simply says, in effect, that the existence of labor organizations is not unlawful; that their operations for mutual help are legal; that the lawful efforts of their members to carry out their legitimate objects is not forbidden; and that such organizations are not *per se* in restraint of trade nor their members as such conspirators in restraint of trade. All this, in my judgment, is lawful now. I do not believe that any decision of any court can

be found where it has been held that a labor organization, independent and apart from acts done by its members, is simply by virtue of its formation and existence a combination in violation of the Sherman law. No court of last resort has held that labor, in the absence of contract, cannot quit work either singly or in a body, and for any reason whatever, or for no reason, and regardless of the consequences to private or public interests. The right to do so is an inherent right and its exercise is superior to the rights of the individual or the public, and the court cannot inquire into the consequences of the exercise of such rights with a view to preventing it.

* * * * * *

This provision gives no more than this. Why pass it? What is its purpose? It is to set at rest in an authoritative way by legislative enactment any doubt that may exist as to these rights of labor, or rather to set at rest this one question, to wit, whether a labor organization is *per se* a combination in violation of the Sherman law, and therefore liable to dissolution irrespective of what it or its members may do. Some able lawyers have held that it is so liable to dissolution, and labor thinks they may be right, and this provision sets at rest that doubt. Surely no one who understands this will object to such legislation, and those who have protested against this section will most surely approve its passage when they understand it. In other words this provision is no more and no less than a legislative declaration of existing law as enunciated by the courts."

Mr. Volstead, an opponent of the bill, when criticising the measure in the debates on the adoption of the conference report, *alone* ventured the opin-

ion that its effect would be to legalize the primary and secondary boycotts, but he hastened to say *that the sponsors for the bill denied this.* He was a member of the House Judiciary Committee which reported the bill, and was also one of the House conferees on the disagreeing votes between the two houses, and took part in the debates on the acceptance of the report of the conferees. Surely what he said ought to throw light on the meaning and intent of those who supported the bill if it is permissible for the Court to read the debates for light on the subject. He said (Cong. Rec., Vol. 51, Pt. 16, p. 16,284, 63rd Cong., 2nd Sess.):

> "Mr. Volstead. There is another feature of this section that may be worth noticing. It certainly authorizes both the primary and secondary boycott, but it also authorizes the blacklist on the part of employers. I presume one was intended to offset the other. I am not prepared to say which will be the most effective weapon of warfare. *Those who stand sponsors for this bill claim that it neither authorizes the one nor the other.* They claim that the bill does not change existing law in regard to labor except that it prevents courts from declaring labor organizations illegal and gives a jury trial when an injunction has been violated. There is absolutely no question as to the legality of labor organizations. Such organizations have been repeatedly held by the highest court of our land to be legal. The bill adds nothing in that respect. Nor is it certain that it grants a jury trial in contempt cases. Courts now have the power to submit questions of fact in such cases to a jury. Under the language of this bill why is it not optional with the court whether it will submit any such question to a jury?"

Mr. Volstead evidently receded from his solitary assertion that Section 20 authorized both the primary and secondary boycott, for he incorporated in his remarks an analysis of this and other sections (see Cong. Rec., Vol. 51, Pt. 17, Appendix, pp. 1156, 1157, 1158, 1159, 1160 and 1161) of the Clayton Act, from which we quote, at page 1158:

> "But section 20 of the Clayton bill calls for special remark, for it is said to be that section which constitutes 'labor's bill of rights.' It singles out for special treatment from the vast field of cases which, by the Constitution and laws of the United States, the Federal courts have jurisdiction over those only which are between employers and employees, or between employees, or between persons employed and persons seeking employment where such relations actually exist at the time suit is brought and an injunction is applied for, which suits involve or grow out of disputes concerning terms and conditions of employment.
>
> "Suits between parties who previously sustained those relations but have ended them, and suits between either of said parties and outsiders are not covered by this section. Suits between an employer and his ex-employees who have struck and boycott cases generally are excluded from this section. Apparently also the class of cases to which the section relates is still further limited by being confined to suits between the specified parties, brought to prevent irreparable injury to tangible property or property rights, because the application for an injunction in the specified cases must describe 'with particularity' the property or property rights to be protected by the injunction. But whether this last limitation on the class is intended or not, it is clear that suits to protect other rights between

such specified parties and outsiders to protect property or other rights, and suits between parties who have previously sustained the relations specified but have terminated them, are not included in the prohibition against the issuance of injunctions addressed to the Federal courts in this section. The legislative history of this section shows that these exemptions were intentionally made.

"And in the very limited class of cases to which the prohibitions of the section are confined by its terms, what are the acts which the Federal courts are prohibited by this section from enjoining? They are any act or acts which might lawfully be done in the absence of such dispute, including the lawful termination of the relation of employment, the lawful recommending, advising or persuading others by peaceful means to terminate employment, the lawful attending at any place where it is lawful to be for the purpose of peacefully obtaining or communicating information, the lawful peaceful persuasion of any person to work or to abstain from working, the lawful ceasing to patronize or employ any party to such dispute, and the lawful recommending, advising, or persuading others by peaceful and lawful means so to do, the lawful paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value, and the lawful assembling in a peaceable and lawful manner. It is these acts which the Federal courts are forbidden to enjoin in the limited classes of cases specified in this section, and which 'shall not be considered or held to be violations of any law of the United States.'

"Since the injunctive power of the Federal courts of equity has always been limited to the prevention of irreparable injury

from unlawful acts, it will be at once seen that this section does not change in the least the existing law, that it is merely a legislative construction of the law as already declared by the courts, and that 'labor's rights,' like those of anybody else, are secured to it not by this section, but by the Federal and State constitutions and laws of long standing passed in pursuance of both. The section merely provides that in the specified suits between the parties named, acts which would be lawful when no 'dispute concerning terms and conditions of employment' existed between them shall not be enjoined or considered or held to be violations of any law of the United States.

"That this is what the section means is shown by the history of the times, to which the courts will look in construing it. It was passed by a Democratic Congress in literal performance of the following platform pledge of the Democratic Party in 1908 and repeated verbatim in 1912.

> "'Questions of judicial practice have arisen, especially in connection with industrial disputes. We believe that the parties to all judicial proceedings should be treated with rigid impartiality, and that injunctions should not issue in any cases in which injunctions would not issue if no industrial dispute were involved.'

"This declaration, it is well known, was inspired and, perhaps, was drawn by Mr. Gompers, who has never ceased for the past 10 years to assert before committees of Congress and in public addresses everywhere and in the magazine of which he is the editor, that precisely that discrimination by the Federal courts existed, and that what he demanded was that it should be legis-

lated against, until he had caused multitudes to believe it was true, and perhaps had come to believe it himself.

"That this is the meaning of the section is also shown by its legislative history. The reports of the committees and even the debates in Congress show that there was no intention of legalizing anything which was then illegal, but only to legislatively declare what was then legal. That the several acts specified in this section might be unlawful under certain circumstances was not denied, and the principles laid down by the Supreme Court in *Aikens v. Wisconsin* (195 U. S., 194) were recognized.

> "'No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if a step in a criminal plot, neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law.'

"That this is the meaning of the section is also shown by the fact that, if it had been the intention of Congress thereby to amend the existing statutes of the United States, it would have repealed thereby the civil service laws prohibiting the discharge, without cause, of the 200,000 employes in the various departments of the Government, the most vital provisions of the interstate-commerce act, both as to the carriers and their employees in doing the work imposed upon them by it, under severe penalties, and the Sherman Antitrust Act, both as to employers and employees, which act the committees declared that they had left unchanged by the Clayton bill.

"That this is the meaning of the section is further shown by the fact that, any other construction of it would render it plainly unconstitutional, and the courts in construing it will not assume that it was the intention of Congress to pass laws that are invalid. The laws creating the courts of the United States give them general jurisdiction, concurrent with the courts of the several States, of all cases, at law or in equity, where the matter in demand exceeds $3,000 in amount, arising under the laws of the United States, and of controversies between citizens of different States of like amount. And the fifth amendment of the Federal Constitution expressly declares that no person shall be deprived of his property without due process of law. Under the Constitution and laws of the United States citizens, who are parties to the several suits mentioned in this section, have the inalienable right to resort to the Federal courts of equity for protection of their property, when assailed by any or all of the acts specifically enumerated therein, since by such acts such courts have heretofore uniformly held that property and property rights may be unlawfully injured and destroyed. Congress could not by a legislative fiat declaring that the injurious acts destructive of property were not unlawful, deprive them of their property. It would violate the fifth amendment of the Federal Constitution. Such a construction would also render the section invalid, because it would invade the judicial power of the Federal courts of equity, which the Constitution declares shall extend to all cases and controversies over which, by the statutes of their creation, they are given jurisdiction. For a statute to say that a Court shall have equitable jurisdiction over a certain case or controversy, and

> then for another statute to deny it, the power to judicially construe previously existing statutes, and also the fundamental essential power to issue and enforce the usual and necessary process required by its jurisdiction, would be a direct invasion by Congress of the judicial department of the Government and totally void."

When the bill was in the House, Mr. Webb, of North Carolina, then Chairman of the House Judiciary Committee, and the member in charge of the bill, offered, in behalf of the Committee, an amendment to the present Section 6 of the Act, then Section 7, to add to the section the words following:

> "Nor shall such organizations, orders, or associations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the Antitrust laws."

The purpose and effect of this amendment, which was later adopted and remains in the Act as it is today, were fully discussed by Mr. Webb and other members of the Committee, and by Mr. Henry, of Texas, Chairman of the all-powerful House Committee on Rules; Mr. Thomas, of Kentucky, and Mr. MacDonald, of Michigan.

Cong. Rec., Vol. 51, Pt. 10, p. 9540, 63rd Cong., 2nd Sess.:

> "Mr. Webb. Mr. Chairman. The amendment which is under consideration is, in the opinion of the committee, in keeping with the declaration of the Democratic platform —to the effect that labor organizations and farmers' organizations organized for mutual

help shall not be considered or construed to be illegal combinations or conspiracies in restraint of trade under the Antitrust laws.

It is needless to say that we have had much diversity of opinion in adopting and agreeing on this particular section, but after all, Mr. Chairman, we have embodied in this amendment what we understand to be the best legal interpretation of the best judges in the United States.

Personally I have never had any idea that the existence and operation of labor organizations, of farmers' unions, or fraternal orders were ever intended to come within the provisions of the anti-trust law. However, some labor leaders have contended for many years that labor organizations have their existence as a matter of sufferance and at the whim of the attorney general, and if suit should be brought, if they were not dissolved entirely, much trouble could be given them. We are therefore writing into the statutes of the United States the concensus of opinion of the best judges of the country on this troublesome question. I have not had the opportunity of reading the opinion, but only last Friday the Circuit Court of Appeals of the Fourth Circuit at Richmond, Va., held that a labor organization was not a conspiracy or combination in restraint of trade. *Therefore we say that we have embodied in this section as set forth in the first part of Section 7 and expressed in the latter part of this amendment which I now offer what is generally understood to be the law and should be the law in the United States with reference to labor organizations, as well as fraternal and farmers' organizations. Applause.*"

Cong. Rec., Vol. 51, Pt. 10, p. 9567, 63rd Cong., 2nd Sess.:

"Mr. Murdock. From the debate I will say to the gentleman that there is a great difference of opinion as to just what his amendment does. I do not think, and I do not think the gentleman thinks, that it goes as far as that amendment offered by the gentleman from Kentucky (Mr. Thomas) and that amendment offered by the gentleman from Michigan (Mr. MacDonald); and I would like to ask the gentleman from North Carolina this, and then I will take my seat: Did the Committee on the Judiciary intend the Webb amendment to exempt organized labor from the provisions of the Sherman Anti-trust Law?"

"Mr. Webb. It certainly does exempt their existence and operation if organized for mutual help and without profit."

"Mr. Murdock. Does it say anything——"

"Mr. Webb. We wanted to make it plain that no labor organization or farmers' organization organized for mutual help without profit should be construed to be a combination in restraint of trade or a conspiracy under the anti-trust laws. Now, I will say frankly to my friend that *we never intended to make any organization, regardless of what they might do, exempt in every respect from the law. I would not vote for any amendment that does do that.* (*Applause.*)"

"Mr. Murdock. If the labor organization goes beyond the province of mutual help, then is it subject to the Sherman Anti-trust Law?"

"Mr. Webb. If it violates the law, it is, of course, it is an organization subject to the law, and I ask if my friend from Kansas would vote to exempt it from all laws?"

"Mr. Murdock. I would vote to exempt it from being confined under the anti-trust laws to mere inactive existence."

"Mr. Webb. But the gentleman would not vote to exempt it and nobody else from all laws?"

"Mr. Murdock. I understand that but I would give strikers the right to peaceful assemblage."

"Mr. Webb. We give them that right in this bill."

Cong. Rec., Vol. 51, Pt. 10, p. 9540, 63rd Cong., 2nd Sess.:

"Mr. Henry. Mr. Chairman, there has been so much controversy about what was intended when the original Sherman Anti-trust law was passed that I think we should make clear just what we intend by this law. Some of us did not believe Section 7 as originally written by the Committee on the Judiciary expressed exactly what should be in this bill. Therefore we took exception to the language of the first part of the paragraph in Section 7 and insisted that there should be additional language. Among those who agreed that the language was not plain enough were the gentleman from North Carolina, Mr. Kitchin, the gentleman from Illinois, Mr. Hinebaugh, the gentleman from Illinois, Mr. Graham, the gentleman from Iowa, Mr. Towner, the gentleman from Maryland, Mr. Lewis and myself. We met to confer, and concluded that we ought to make the language more explicit. In that conference, held in the Committee Room of the Committee on Rules, on the evening of May 21, 1914, we agreed that this language should be added at the end of the first paragraph of Section 7, to wit, after the word 'thereof':

> Nor shall such organizations, orders, or associations or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under the Anti-trust laws.

This language I have read is exactly the verbiage used by the gentleman from North Carolina (Mr. Webb) in the amendment offered by him and is the amendment agreed upon by Mr. Kitchin and our conferees in my office. The Committee on the Judiciary courteously accepted the language as prepared by the gentlemen in the conference, believing, I assume, that we were correct and that the original language used by them was not quite explicit. So we came to a satisfactory agreement with the House Judiciary Committee about this addition to the first part of Section 7, and as far as I am concerned, we are standing squarely with the Committee for that paragraph with our added language.

We called into the conference with us the heads of the American Federation of Labor, and submitted this amendment to them, and said to them that we believed its adoption as an addition to Section 7 would clearly exempt labor organizations and farmers' organizations from the provisions of the Anti-trust laws.

They agreed with us; they called their counsel into conference with them and with us and we all concurred that this amendment added to the paragraph of Section 7 would give these organizations what they have desired so long, and all they have been struggling for since the original enactment of the Sherman Anti-trust Law."

Cong. Rec., Vol. 51, Pt. 10, p. 9547, 63rd Cong., 2nd Sess.:

> "Mr. Towner. Mr. Chairman, I was not satisfied with the original language used in the paragraph, neither am I satisfied with the amendment proposed. Nevertheless, I will support the amendment. I will do this because it is the best that can be obtained, and I believe it will assist, at least, in some degree, to make clear the object and purpose of the provision.
>
> That object and purpose is, Mr. Chairman, to definitely state that the provisions of the Anti-trust laws shall not be so interpreted as to forbid the existence or operation of labor or farmers' organizations instituted for mutual help. With that object and purpose, I am in entire sympathy.
>
> I presume there has been no proposition discussed in recent years which has absolutely no valid objection to it that has been more misrepresented and abused. It has been termed a proposal to exempt certain classes from the operation of the law, while others are included; to punish one and release another for the same act; to say that all are not equal before the law. It is none of these things.
>
> *Any association of the classes mentioned, or any member who violates the anti-trust laws will be liable to their penalties the same as any other association or person. It is merely provided that the organization or legitimate operation of such association shall not be held to be within the prohibitions of the statute."*

The matter had now reached the point where the *House itself* had to settle it, and it proceeded to do so, just as Congress has always done, so far,

when it has been proposed to legalize violations of the anti-trust act by labor unions and farmers' organizations or their members; it flatly and emphatically voted down every amendment which was offered, and there were two of them, to make the Sherman Anti-Trust Act *not applicable* to labor unions. (Cong. Rec., Vol. 51, Pt. 10, p. 9569.) Mr. Thomas, of Kentucky, and Mr. MacDonald, of Michigan, were determined to force that issue and offered these amendments.

Speaking to the Webb amendment in connection with his own amendment, Mr. Thomas said (Cong. Rec., Vol. 51, Pt. 10, p. 9544, 63rd Cong., 2nd Sess.):

> "Mr. Thomas. Mr. Chairman, to say the least of this amendment, it is as ambiguous as the prophesy of a Roman oracle. As a matter of fact it means nothing. It is a mere declaration of that which is now the law. To make the statement that this law shall not be construed so as to hold certain organizations to be illegal is simply to state that those organizations per se shall not be declared illegal by this law. You might insert a paragraph declaring that under this law the Baptist Church or the Masonic order should not be construed to be an illegal combination in restraint of trade. They are not illegal, even, in the absence of that declaration. Agricultural organizations and labor organizations under this law are not illegal combinations, even without that declaration; and notwithstanding that declaration the very moment that an agricultural association or a laborers' organization violates any provision of this law it is applicable to such association, and they can and will be punished under the law. Any

man knows that. For instance, should these associations have in their by-laws or charters articles which allowed them to form conspiracies, to form monopolies in restraint of trade, does any man contend that the very moment they attempted to carry out such declaration of the organization they would not fall under this law? To be sure they would. If you are going to exempt these organizations, exempt them. If you are not going to exempt them, say so. The amendment which I shall offer after this amendment has been voted on simply declares that the provisions of the anti-trust laws shall not apply to any of these organizations. There you have a clear-cut exemption.

* * * * * *

As I had started to state, I believe when we go a-catting we ought to go a-catting; and I believe if we are going to take these organizations out from under this law we ought to do it in such a way that there can be no mistake about it and no reason for any court decisions upon the question hereafter. (Applause.) My amendment simply says that these anti-trust laws shall not apply to these organizations. If any man thinks he can make an amendment plainer than that, I would like to hear from that gentleman, even the gentleman from Texas (Mr. Henry).

* * * * * *

So I say, gentlemen, that if you are going to take them out of the provisions of these laws, take them out. If you are going to keep them in, why, keep them in and do not go to beating the devil around the bush about it. Come out plainly and let us keep them in or take them out, one of the two. The gentleman from Texas (Mr. Henry) tells us that when the Sherman law

was passed it was intended to exempt farmers' and laborers' organizations."

Mr. MacDonald, of Michigan, speaking to the Webb amendment in connection with his own, said (Cong. Rec., Vol. 51, Pt. 10, p. 9544, 63rd Cong., 2nd Sess.):

> "Mr. MacDonald. Mr. Chairman, I am very much in favor of the principle of exempting these organizations from the operation of the anti-trust laws. I expect to vote for the Webb amendment, if for no other reason, for the moral effect that the adoption of that amendment will have; but I am not given to self-deception, and in voting for that amendment I am not deceiving myself as to the effect of that amendment. That amendment may have some beneficial effect for the organizations mentioned therein but it will not exempt those organizations from the operation of the anti-trust laws. Now, the Supreme Court in the case of *Loewe* v. *Lawlor*, commonly known as the *Danbury Hat* case, puts this matter up to Congress in no uncertain terms. They say, on page 239 of Vol. 208 in the United States Reports,
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> > 'After the Sherman law was enacted, bills were introduced in the Fifty second Congress——'
>
> and then they enumerate all the bills that have been introduced to amend the Sherman Antitrust laws, making it inapplicable to labor and these other organizations. And then they say:
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> > 'Congress therefore has refused to exempt labor unions from the comprehensive provisions of the Sherman law against combinations in restraint of trade, and this refusal is the more sig-

nificant, as it followed the recognition by the Court that the Sherman Anti-trust law applied to labor organizations.'

Now, the amendment that has been offered by the gentleman from North Carolina makes by implication these organizations subject to the terms of the law. It defines certain acts which are said in general terms to be permissible; and therefore by implication it leaves forbidden other acts which are not permissible, and makes by implication these organizations subject expressly to the terms of the Sherman law if they should violate any of the provisions of the law. Another point is this: The amendment provides that they shall be liable only within certain limits and those limits are confined to this—where they exercise their powers only for mutual help and not for profit. They are limited absolutely to that field in their operations, and who, forsooth, will decide whether their operations fall within the restrictions of mutual help and not for profit? Why, the courts, of course; and you will have the same old battle for definite construction over and over again. Therefore you have for certain purposes and as to certain acts brought these organizations where the courts may hold them expressly within the operation of the Sherman law.

Now, every gentleman who gives this matter any consideration instinctively realizes that this is true. The gentleman from Texas (Mr. Henry) realizes it as well as anybody else, because in his speech this morning he said, 'Gentlemen, we are going to make this law not to apply to these organizations.' He said, in his speech, 'Not apply'; why does he not say so in the amendment? There is no way of making it any

plainer or simpler or doing what you want to do than to use the language that the gentleman used in his speech, but which is not used in the amendment.

Mr. Murdock. Will the gentleman yield?

Mr. MacDonald. Certainly.

Mr. Murdock. And are not the words 'Shall not apply' the words used in the Terry amendment, in the Hamill amendment, and in the Hughes amendment?

Mr. MacDonald. Yes; every amendment proposed to this law has used the words, and that was in the amendment that the Supreme Court in the *Danbury Hat* case said if Congress had done those things there would be no question about the operation of the law."

In order to explain more fully the true meaning of Sections 6 and 20 of the Clayton Act, we insert here a further quotation from the remarks of Mr. Volstead, which contained an analysis of Sections 6 and 20, in order to show their connection with the judicial history of the subjects which they cover (Cong. Rec., Vol. 51, Pt. 17, appendix, pp. 1156, 1157 and 1158):

"First, it does not change in any respect the Sherman Anti-trust Act as it has been construed by the Supreme Court relative to these matters. Both the Senate and House Judiciary Committees, which reported the bill, so stated, and its provisions bear them out. The Senate committee in its report said:

'It is well, at the outset, to state the theory of the bill, both as it passed the House of Representatives and as it is proposed to be amended, for the general scope of the House measure is unchanged. It

> is not proposed by the bill or amendments to alter, amend, or change in any respect the original Sherman Antitrust Act of July 2, 1890. The purpose is only to supplement that act and the other antitrust acts referred to in section 1 of the bill.'

The Senate Committee also quoted from the report of the House committee to the same effect, as follows:

> 'The bill does not interfere with the Sherman Antitrust Act at all; it leaves the law of conspiracy untouched, and it is not open to effective criticism on any constitutional ground.'

Moreover the bill in section 4 re-enacts, word for word, section 7 of the Sherman Antitrust Act, under which the *Locaw* case was brought to and decided by the Supreme Court, without excepting that or any other case from its provisions, which action, upon established principles of construction, is an adoption by Congress of the doctrines of that case. In addition section 16 gives every person, without exception, the right to injunctive relief against threatened loss from conduct of any one in violation of that act, without excepting any case whatever. Read in the light of the foregoing, section 6 of the bill is nothing more than a legislative declaration of the law as it had been laid down by the Supreme Court in the case of *Adair* v. *United States* (208 U. S., 178), which was under consideration by the Court along with the *Locaw* case and was decided just one week before it, to the effect that Congress under its power to regulate commerce had not prohibited and could not prohibit the existence of labor organizations as such. The court there said:

'Manifestly any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the states, must have some real or substantial relation to or connection with the commerce regulated. But what possible legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce? Such relation to a labor organization cannot have, in itself and in the eyes of the law, any bearing upon the commerce with which the employee is connected by his labor and services. Labor associations, we assume, are organized for the general purpose of improving or bettering the conditions and conserving the interests of their members as wage earners—an object entirely legitimate and to be commended rather than condemned. But surely those associations as labor organizations have nothing to do with interstate commerce as such. One who engages in the services of an interstate carrier will, it must be assumed, faithfully perform his duties, whether he be a member or not of a labor organization. It cannot be assumed that his fitness is assured or his diligence increased by such membership or that he is less fit or less diligent because of his not being a member of such an organization. It is the employee as a man and not as a member of a labor organization who labors in the service of an interstate carrier.'

The right of labor unions as such to exist and the limitations on their lawful activities, are well defined in the case of *Gompers v. Buck's Stove & Range Co.* (221 U. S., 439), and Section 6 of the Clayton Bill is

but a declaration by Congress to the same effect, and is almost a paraphrase of it. The Court in that case said:

> 'Society itself is an organization and does not object to organizations for social, religious, business, and all legal purposes. The law therefore recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available the strength, the influence and power that comes from such association. By virtue of this right, powerful labor organizations have been organized. But the very fact that it is lawful to form these bodies with multitudes of members means that they have thereby acquired a vast power in the presence of which the individual may be helpless. This power when unlawfully used against one cannot be met except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one.
>
> In the case of an unlawful conspiracy the agreement to act in concert when the signal is published gives the words "unfair" "we don't patronize," or similar expressions a force not inhering in themselves, and therefore exceeding any possible right of speech which a single individual might have. Under such circumstances they become what has been called "verbal acts" and as much subject to injunction as the use of any other force whereby property is unlawfully damaged.

> When the facts in such a case warrant it, a court having jurisdiction of the parties and subject matter has power to grant an injunction.'

I insert here for comparison with the foregoing declarations of the law by the Supreme Court the words of Section 6 of the Clayton Bill, that it may be seen that they work no change in the existing law.

> 'The labor of a human being is not a commodity or an article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations instituted for the purposes of mutual help and not having capital stock or conducted for profit or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof, nor shall such organizations or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.'

In this connection it is proper to refer to the legislative history of this section for its better understanding. For 24 years the labor unions had sought specific exemption from the provisions of the Sherman Anti-trust Act by an amendment of it, stating it should 'not apply to' them but had never succeeded. When the Clayton Bill was before the House, several attempts were made to amend this section by inserting in lieu of the words 'shall be construed to forbid the existence, etc., of labor unions, etc.,' the words 'shall apply to,' but they were all defeated. This was but a repetition of what

was thus described by the Supreme Court in the *Loewe* case:

> 'The records of Congress show that several efforts were made to exempt by legislation organizations of farmers and laborers from the operation of the act, but all these efforts failed, so that the act remained as we have it before us.'

This section further declares nothing in the antitrust laws shall be construed to forbid or restrain the individual members of labor unions from lawfully carrying out the legitimate objects thereof. The legitimate objects of labor unions, of course, are the same as those of other people, the advancement of their own interest by lawful means. This section, therefore, does not affect in the least the restraints of the Sherman Antitrust Act upon the members of such unions from carrying out unlawfully either the legitimate or illegitimate objects thereof.

When does a labor union become an unlawful combination under the Sherman Act, and what are the means which it and its members are prohibited thereby from using? The answer is to be found in *Eastern States R. L. D. Association* v. *U. S.* (234 U. S., 600).

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This section does not affect in any respect the liability of the members of such unions for the unlawful acts of their officers and agents when within the scope of their authority as the same has been established in the *Loewe* case. Nor does it change in any way the rules of evidence by which the unlawful nature of such combinations is established. The same remain as laid down

as follows by the Supreme Court in the *Retail Lumber Dealers'* case above cited.

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Nor does this section sanction the existence of, or remove from the condemnation of the civil and criminal provisions of the Sherman Act or justify or excuse a conscientious Department of Justice in neglecting to proceed against, such a combination as the American Federation of Labor, whose constitution provides for the declaration of boycotts and establishes a vast machine for their prosecution in interstate commerce, and directs its executive council to secure the unification of all labor organizations so far as to assist each other in making the same effective, and whose principles and methods are thus accurately described in the following report unanimously adopted by its convention of 1905:

> "We must recognize the fact that a boycott means war, and to successfully carry on a war we must adopt the tactics that history has shown are most successful in war. The greatest master of war has said that war was the trade of a barbarian, and the secret of success was to concentrate all your forces upon one point of the enemy, the weakest if possible. In view of these facts, the committee recommends that the state federations and central bodies lay aside minor grievances and concentrate their efforts and energies upon the least number of "unfair" parties or places in their jurisdiction. One would be preferable. If every available means at the command of the state federations and central bodies were concentrated upon one such, and kept up until successful, the next on the list would be more

> readily brought to terms, and within a reasonable time none opposed to "fair" wages, conditions or hours but would be brought to see the error of their ways and submit to the inevitable.'

> The Sherman Antitrust Act, having been enacted under the constitutional power of Congress to regulate commerce among the states, is of course the supreme law of the land in all cases within its purview in every state, territory, and district, and judges of every court, federal and state, are bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding. Since there is nothing in the Clayton Bill which limits in any way the restraints of that act upon the unlawful acts of labor unions or their members, and since it goes still further and specifically grants to any person threatened with irreparable injury from acts forbidden by that act injunctive relief, the protection of the individual, whether employer or employee, instead of being impaired is greatly increased thereby."

Judge Hough qualified, somewhat, his statement that the announced intent of Sections 20 and 6 was to legalize the "secondary boycott" by adding the words "at least in so far as it rests on or consists of *refusing to work for anyone who deals with the principal offender*. The contrary intent was announced again and again in debates. The distinction between *a simple strike* and a *boycott by means of a strike* was clearly pointed out in the debates, and it was repeatedly asserted and never denied that the Clayton Act was not intended to, and did not legalize *a boycott by means of a strike*. And particularly on the afternoon of August 29th, 1914,

the particular method of boycotting by strikes employed in this case and in the case of *Paine Lumber Co.* v. *Neal*, 244 U. S., p. 459, was specifically brought to the attention of the Senate, with the explicit statement that the Clayton Act did not, and probably could not constitutionally, legalize it, and this assertion was never disputed or questioned. We quote from the remarks of Senator Thomas, of Colorado, one of the ablest lawyers of the Senate, on that subject (Cong. Rec., Vol. 51, Pt. 14, pp. 14021, 14022, 14023):

> "Mr. Thomas. Mr. President, I have given much thought to section 7, and from time to time have considered its provisions since it was reported from the House committee and thus became a part of the bill which has attracted universal public attention. I think that that section as it has been amended here *corresponds to the Democratic pledge upon the subject*, and I am still old-fashioned enough to want to adhere to the platform of my party wherever it is possible. My faith in it receives an occasional severe jolt, but still I think it is making fairly good progress over a rough road.
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> Mr. President, I was a member of the Democratic national convention of 1908, which met in my city. My delegation did me the honor to place me upon the committee on resolutions, which reported that platform to the convention, where it was adopted. Among other things, we said:
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> > 'The expanding organization of industry makes it essential that there should be no abridgment of the right of wage earners and producers to organize for the protection of wages and the improvement

of labor conditions, to the end that such labor organizations and their members should not be regarded as illegal combinations in restraint of trade.'

The convention of 1912 adopted that plank of the platform of 1908 in haec verba, so that our attitude upon the subject in 1908 was our attitude in 1912 and should be our attitude here. That declaration was inspired by the fact that the courts ever since the case of the *United States* v. *Workingmen's Amalgamated Council* (54 Fed. 994), which arose in the State of Louisiana, have been inclined to hold and have held in several instances that labor organizations were *per se* organizations in restraint of trade and therefore obnoxious to the provisions and prohibitions of the Sherman Act. The object of the Democratic Party in this platform declaration was to provide against that contention by legislation necessary for the purpose, so that as far as the labor organization was concerned it should start out upon the same plane and occupy the same position held and occupied by a corporation. And that object is subserved by this section if my construction of it is the correct one.

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For one, Mr. President, I do not want to be a party to the enactment of a law the operation of which is going to prove disappointing to those who may build so much upon it, and inasmuch as I think this statute merely declares that organizations per se shall not be obnoxious to the antitrust law, I deem it important both to my party and myself that I give my views as to the meaning and effect of this section. It declares:

> 'That nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations instituted for the purpose of mutual help. * * *'

And so forth. But for the decisions to which I have referred that declaration would not be necessary. It is not necessary that we should here say that nothing contained in the antitrust laws shall be construed to forbid the existence and operation of corporations, because corporations as such are not forbidden to exist by law. Corporations are as free to organize and carry on their legitimate business since, as they were before, the enactment of the anti-trust law, and when in this section we declare that nothing in the anti-trust law shall forbid the existence and operation of agricultural and labor unions, we simply say that these organizations and the corporations shall stand on the same equality, shall occupy the same level, and may exist as such without running counter to the provisions of the anti-trust law. Let us proceed:

> 'instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.'

The effect of this section is to neutralize and to render inoperative those decisions of the class to which I have referred, which declare or tend to declare that these organizations

are *in themselves* organizations in restraint of trade, and therefore subject to dissolution.

The fact of existence, their status, in other words, is fixed by this section, and in so far as their objects are legitimate and in the pursuit of them legitimate measures are used there can be no conflict with the antitrust laws. The same thing may be said of corporations great and small. But beyond that, Mr. President, this section does not go. The thing itself is legalized. Whether it comes under the provisions of the antitrust laws depends upon its future conduct, which may or may not be offensive to those statutes.

The union can do nothing, in other words, that the corporation cannot do under this statute if it proposes to steer clear of the anti-trust laws. The corporation can do anything that the labor union can do and keep out of the clutches of the antitrust law. Its purpose, in other words, Mr. President, is to create an *equality of status*, and beyond that the general laws of the country are operative.

I think, Mr. President, that *so far as strikes are concerned* they cannot be punished or prevented by anything contained in the antitrust law if this section is adopted. I say that first, because I am aware of no court in the country except in cases involving the operation of some of our public transportation companies—and those decisions are, to some extent, obsolete—which declares that ceasing to work either individually or collectively is an offense against the laws of the country. And I question whether a lock-out, *unless designed to restrain commerce*, is not lawful also.

It is a fundamental principle that every man in this country is entitled to work if he wants to. It is an equally fundamental

principle that every man is entitled to abstain from working if he wants to, and the denial of either of these rights is necessarily a denial of the other, and will logically lead to the abolition of both. They must coexist or they will mutually disappear.

So that the *act of striking*—which is negative, in that its primary operation is such whether universal, whether communal, or individual—is perfectly proper under this law as it should be a recognized legal right of the citizen everywhere without it.

For example, if the brotherhood of railway trainmen, after the enactment of this statute, should for reasons satisfactory to themselves, determine to quit working, they would have a perfect right to do so. There is nothing in the statutes which we call the antitrust laws, or in this statute, that would justify any interference with the exercise of that right. It may be that this section, Mr. President, is an improvement upon the present statutes in that it emphasizes and legalizes, if further emphasis is necessary, the right of the individual and the right of the organization to quit work and to abstain from working as long as desired, and not be subject to any of the provisions of the antitrust law.

Therefore with reference to this branch of the subject, I may summarize the situation by the statement that section 7 makes, so far as the antitrust laws are concerned, all labor and agricultural associations lawful and endows them with power, if they did not have it before, of carrying out in a lawful manner the legitimate purposes and objects of their organization, but they may nevertheless so act as to violate the law just as corporations or individuals may violate it by conduct which brings them within its prohibitions. No combination really be-

comes a combination in restraint of trade until it does something, until it takes some active steps, until its plans are effected or sought to be effected by overt acts. A man may contemplate a crime, and the law is powerless to lay its hands upon him until by some act he does or attempts the thing forbidden.

So it is the act or the attempted act, in its last analysis, which makes a corporation or any other association of individuals subject to the provisions and the inhibitions of the antitrust law, and it would be a mistake if this bill were enacted into a statute under the mistaken impression that it does something more; otherwise a large class of our fellow-citizens might well say they asked us for bread and received a stone.

A combination of men, like any other combination, can become, through their actions, a conspiracy in restraint of trade. We may imagine a half dozen merchants doing business individually in the City of New York combining with a half dozen merchants doing business individually in the City of San Francisco to carry out some line of policy as thoroughly prohibited by the antitrust acts as we can imagine similar conduct between as many corporations similarly located. We may also imagine a combination in restraint of trade between organizations of men who are unincorporated in the City of Philadelphia and organizations of men who are unincorporated in the City of New Orleans quite as easily as we can imagine it between corporations existing in those two places. The difference is not in organization, not in the components which make up those committing the offense, but in the offense itself. It seems to me, therefore, that he who defined this proposed statute as one giving full immunity to organizations

whereby they would be entirely exempted from the operative provisions of existing statutes either has not given this section the careful consideration it deserves or else is able to give it a construction to which I cannot assent.

Mr. President, I have said that *under this proposed statute* there can be, in my judgment, no question about the right of organizations *to strike*, to abstain from working if they see fit to do so, but there may be a *vast difference between a strike and what is called a boycott*. One consists in the exercise of undoubted constitutional rights; the other consists in the exercise of a power which may or may not conflict with the guaranteed rights of other individuals, which may or may not come within the prohibitions of existing statutes. If it does not, there is no penalty; if it does, then the penalty should be as inevitable, and I think is as inevitable, in the one case as in the other.

Mr. President, a boycott, as I have said, may or may not be an act in restraint of trade, but it is difficult to conceive of an effectual boycott that is not in restraint of trade to a greater or less degree. It is true that a boycott may be practiced upon the individual without reference to the thing or commodity involved. It is equally true that you can seldom separate the one from the other. As a consequence, unless section 18—about which I will perhaps have something to say when we reach it—makes a change which I am unable at present to conceive, this bill, if enacted, will not relieve any organization from the consequences of the antitrust acts *if, in carrying out what is known generally as the boycott*, there is involved a restraint of trade under the meaning of the antitrust laws.

Mr. President, let me instance one or two forms which the boycott has taken to which public attention has been directed and which to my mind, irrespective of this proposed statute, *will bring those who repeat the same practice directly within the antitrust acts.* I read from the World's Work of July of this year at page 257, the following:

'The Unions and The Sherman Act.

Some time ago a department store in one of our large cities bought some goods from a manufacturer who was at odds with the local union. A walking delegate went to the manager of the store and told him not to buy from that manufacturer. The store manager replied that he was not concerned in the union's fight and that, as he could serve his public best by buying from the non-union manufacturer, he would continue to do so.

The next day a woman came into the store and ordered a large ice chest to be delivered C. O. D. on the top floor of an apartment that had no elevator, four or five miles from the store. When the ice box was finally in place, the woman told the delivery men from the store that she did not want it because she had learned that the store dealt with manufacturers who were "unfair" to labor. The next day a similar thing happened, and again the day after. Such annoyance finally became so common that the manager of the store notified the offending manufacturer that he would no longer deal with him. Then all went well again, except that the public got a poorer article made in a union shop for the price it used to pay for the better article.

In a certain small town the school authorities had decided upon a set of read-

ers for the school, their judgment being based entirely upon the educational merits of the books and upon the price. When the purchase was about to be made, some of the members of the Town Council who were members of the unions were told that these books were not made entirely in a union shop. The members of the Council (the body that pays the school bills) suggested that another set of books, the product of entirely union shops, be substituted. The school authorities made the change and all went well—except that the children of the town were taught from inferior books.

A company that employed non-union men in the manufacture of building materials sold a large part of its product in a large city near its plant. The unions of the building trades refused to allow their members to work on buildings where the materials came from this company. The unions were very strong and the company was driven out of that field, in other words, competition was reduced by the elimination of one competitor.'

Mr. President, these acts are essentially acts in restraint of trade. They necessarily affect commodities which but for them would take their chance in competitive markets and succeed or fall upon their own merits. If they are entirely shut out, as was the case here, there necessarily is an injury to trade and that injury comes from combined action. You may call it what you will, but the effect upon trade is the same. *There is nothing in this bill, and there is nothing that we could constitutionally put into this bill, that would so far legalize such acts as to exempt those committing them from responsibility under the general statutes of the nation.*

In this connection I want to call attention, Mr. President, to an article written by one Walter Gordon Merritt, a gentleman whom I do not know, with whose views I am not in full accord, but who makes some observations upon the subject which I am now discussing that seem to me to be entirely pertinent. He says:

> 'Labor unions occupy a new relation to the law of to-day, not on account of the change in the law, but on account of the change in their activities and of their assertion of an interest in the sale and distribution of commodities which are the subject of commerce. The adoption of the union label and the statutory regulations in connection therewith, which create a new right unknown to the common law, show the tendency of organized labor to follow the products of their labor into commerce by booming the sale of union-made goods, and suppressing the sale of non-union goods.'

We may concede, Mr. President, that labor is not a commodity, and, not being a commodity, should not be made subject to the provisions of the antitrust law; but when labor unites its element, whatever it may be called, commodity or otherwise, with the things which it produces and goes into the market for the purpose of promoting or preventing its sale, then we must consider it in connection with the commodities to which such action relates; and in as much as it asserts its interest in the thing which it creates and uses its tremendous power in influencing markets for and against it, necessarily it occupies a different attitude from that which it occupies in the matter of working or of refusing to work.

This illustrates the fundamental difference *between the strike and the boycott;* the one concerning labor, the other concerning labor and its products; and in so far as its products are identified with the act, just insofar will there be collision with the provisions of the antitrust act.

We passed a bill here the other day in which we declared that unfair competition is made unlawful. We did not say that unfair competition of corporations shall be made unlawful; that unfair competition of attorneys at law shall be made unlawful; that unfair competition by any particular class of artificial or natural persons shall be made unlawful; but that unfair competition, wherever and by whomsoever practiced is made unlawful; and when the element of the boycott enters between competitors by taking sides with one and against the other, unfair competition is just as certain to result as that the law of gravitation operates at all times.

'All boycotts are direct attempts to control the relation between producer and consumer, while most strikes are the direct attempts to control the relation between employer and employee. The ordinary strike attacks the working organization, or the productive machinery; the boycott attacks trade and goodwill, or the distributing machinery. The first affects manufacturing, with which the antitrust act has no concern; the second affects the sale and distribution of commodities through commerce, to which the law does apply. The well organized effort of the unions to drive open shop articles from interstate commerce clearly offends the Sherman antitrust law and the same is true of any effort to destroy or suppress

the competition of any non-union manufacturer.'

This statement, Mr. President, will remain unchallenged until the Sherman law is modified or repealed.

Let no man, either in this body or out of it, lay the 'flattering unction' to his soul that the enactment of this proposed statute is going *to exempt organizations from the consequences of such a boycott.* There is nothing in this bill, and I repeat that I do not think that constitutionally we could put anything into this bill, that would give it such effect, and he is deceived and will be sadly disappointed who places any other construction upon this proposed law. This author continues:

'When workingmen pass from the strike to the boycott, they play the role of producers of merchandise, interested, like their employers, in the sale and distribution of products, which are the joint fruits of capital and labor. The employer seeks to advance the sale of his products in preference to those of his competitors and the union seeks to advance the sale of products made by union men in preference to those made by non-union men. Like the employer, the union at times resorts to the illegal practice of suppressing competitive sales. In such cases both employ the same means for the same end, for both block the channels of interstate commerce in order to fill their own pocketbooks.'

I do not see, Mr. President, how any man for a moment can question the mathematical accuracy of that statement. It is made dispassionately, and, of course, all discussions of so very important a subject as this

should be made without any passion or prejudice, for, Mr. President, legislation conceived and enacted in either generally acts like a boomerang—it recoils upon those for whose benefit it is proposed to have been enacted.

> 'The derailment of a train for the purpose of preventing the transportation of competitive products would be the clearest violation of the antitrust law. In such a case no one would doubt that an employee would be equally guilty with the employer in committing such a crime, yet the blocking of the channels of interstate distribution by intangible methods is open to the same argument.'

Mr. President, if it be true that under the provisions of this bill labor organizations may indulge with impunity in the boycott, then it is equally true that manufacturers may combine with labor organizations in boycotting their competitor's goods, and because of such combination they will also become exempt from its operation, for it is an elementary legal proposition permitting of no exception that if the principal is not guilty the accessory cannot be guilty. The result would be that we would have a statute prohibiting corporations from any act in restraint of trade unless those actions were in combination with employees, in which event they would be absolutely exempt from its provisions and the Sherman act would cease to be an effective force in interstate commerce. The mere statement of such a proposition is its own refutation.

We all know that in many instances such combinations are made; that unscrupulous concerns and manufacturers deliberately unite with labor organizations for the purpose of preventing that competition which

if it existed would be helpful for the public, but at the same time result in reduced profit to those interested. I can give one or two instances:

> 'The Manufacturing Woodworkers Association of New York, composed of union manufacturers of wood trim, agreed to employ only union carpenters on condition that the union will protect them from all openshop competition by calling strikes on all buildings where openshop products are used. Through this combination, no non-union woodwork—which is twenty-five to fifty per cent. cheaper than union woodwork—can be used for building purposes in certain parts of the country, because the builder is deterred from purchasing such material for fear of disastrous strikes. Monopoly and inflated prices are thus assured, while employer and employee divide the profits.'

I am told, Mr. President, that one result of this agreement between the manufacturing woodworkers in the City of New York and the union organizations of that city is that it has completely excluded all non-union wood-trim products from that market, in consequence of which the others have an absolute monopoly and fix their own prices.

I am not arguing for its justice or its injustice; I am simply calling attention to the far-reaching fact that when you concede the exemption of any association from the operation of the prohibitions of the anti-trust act, you open a door which will permit of its absolute violation with impunity all along the line. Having conceded such an exemption, I cannot conceive of a product of commerce, I cannot conceive of a business in which men engage which by combi-

nations between corporations and unorganized associations cannot snap its fingers in the face of the antitrust act and march forward to monopoly without regard to the power and dignity of the government.

Mr. President, it has been said—I do not know whether it is true or not—that the strikes in West Virginia were largely financed by coal operators in Ohio, Indiana, Illinois and western Pennsylvania, in order to overcome the natural advantage which the West Virginia mine owner had because of the quality of his coal, the manner in which nature has placed it in the earth, and the advantage of other conditions which are commercial in their character. Whether it be true or not, the possibility of the accomplishment of such a thing is certainly obvious to any one, and therefore I repeat that if under the provisions of this bill a boycott aimed at the distribution of products is legalized, then the producers of certain lines of those products, by combining with those carrying on the boycott, can effectuate their own monopoly in defiance of the prohibitions of the existing law. *I do not think, Mr. President, that there is any part of the country or any citizenship in any part of the country in or outside of labor organizations that would seek or attempt to justify or expect the enactment of legislation having that effect.*

There is another thing, Mr. President, with reference to this bill to which I want to call attention. I must repeat that my main purpose is to inform those interested in the measure that this bill is not the all-embracing panacea which some seem to think, to the end that there may be no flare-back as against this Congress after its provisions are tested by the courts. *This bill does not, because it cannot, interfere with*

the operations of any state law bearing upon the subject of labor organizations, of corporate monopoly, or any other commercial legislation. It may be, Mr. President, that our steady and constant advance towards centralization, our usurpation, if I may use the word, first of one and then of another hitherto recognized state right, will ultimately bring all these things under the shadow of the National Capitol. It may be that even I shall live to see the state relegated to the position which counties in the states now occupy and the national government extend its arms, like those of Briareus, until they shall take in and embrace every subject of local concern.

Of course this bill does not pretend to interfere with the operation of state laws; but, Mr. President, we should make the statement here, so that we cannot be misunderstood hereafter, that every repressive statute now upon the statute books of every state will be just as effective, just as operative, and just as vigorous as it is at present. *The legislation which we are enacting, within the provisions and pledges of the Democratic platform, means what the language employed conveys to the mind, and will be so construed.*

I have heard it said, though not in any authoritative way, Mr. President, that this bill is desirable because of the complaints which have been made concerning the unjust nature of State legislation. I have heard it constantly asserted that as soon as this bill is enacted into law every statute in conflict with it, wherever existing, disappears to the extent of such conflict. That is an impression which ought not to be entertained anywhere and which I think justifies calling attention to the fact, however obvious its unfounded character may be to members of this body.

> The amendments proposed by the Senate Committee, Mr. President, are, in my mind, admirable, in view of the purposes sought to be subserved; and, as it stands, the bill ought to become a part of the statutes, since it meets the legitimate objecions which have been made to the provisions of the Sherman Law based and founded, as those objections are, upon criticism and comments made by the framers of that measure at and before the time of its enactment."

The legislative history, and the contemporary history, to a large extent, of Sections 6 and 20 of the Clayton Act, are contained in the seventeen parts of Volume 51, of the Congressional Record, comprising more than 20,000 pages, which preserve the collective wisdom of the 63rd Congress at its 2nd Session, and we confidently assert that there is nothing therein which justifies the opinion of his Honor Judge Hough, "that the designed, announced and widely known purpose of Section 20 (perhaps in connection with Section 6) was to legalize the secondary boycott, at least in so far as it rests on and consists of refusing to work for any one who deals with the principal offender."

During the 62nd Congress, at its second session, when the present Section 20 of the Clayton Act (then Sec. 266c of the Clayton Bill, then pending before the House, which is set out in full in Sen. Rep. No. 698, 63rd Cong., 2nd Sess., at p. 35), was under discussion in the House, Hon. John W. Davis, then a congressman from West Virginia, a member of the House Judiciary Committee, which reported the bill, and perhaps its author, said of its purpose and effect (Cong. Rec., Vol. 48, Pt. 7, p. 6440, 62nd Cong., 2nd Sess.):

"Mr. Davis: Gentlemen say that the effect of this bill is to legalize the so-called 'Secondary boycott.' *I deny it.* In the first place, as the gentleman from Pennsylvania (Mr. Wilson) has said the word 'legalize' is misused. The bill does not pretend to be a code governing the conduct of trades disputes. All that is attempted here is to say that certain acts are not amenable to the process of injunction, whatever other rights or remedies may grow out of them; but *within the acts enumerated by this bill, the secondary boycott is certainly not included.*

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What is the secondary boycott? It can be summed up in a sentence as coercion in some form directed against a person who is not a party to the trades dispute, in order to force him to join in injuring one of the parties to the dispute. It is a clear invasion of the rights of neutrals. The law recognizes the fact that a man may employ whomever he chooses and may be employed as long as he will. When the relation of employer and employee ends, either may withdraw patronage or favor from the other; either may announce to his friends that he has so withdrawn; but neither can say to friend or foe that at the risk of personal injury they must, though unwilling, join in the conflict.

The language of this bill is:

> 'From ceasing to patronize or to employ any party to such disputes, or from recommending, advising, or persuading others by peaceful means so to do.'

Does anything less than this protect the fundamental and constitutional rights of the

parties concerned? I repeat that the essence of the secondary boycott is coercion directed towards a person not a party to the dispute. This bill does not *countenance coercion towards any one*, and least of all towards third parties. I ask leave for another quotation from Martin's Modern Law of Labor Unions, pages 107 to 109, to which I have referred in support of this position.

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> 'The vital distinction between combinations of this character and boycotts is that here no coercion is present, while, as heretofore shown, coercion is a necessary element of a boycott.'

It will be seen that all through the section there runs the requirement of peacefulness. Force, violence, intimidation, fraud, coercion—none of these will any man seek to justify, *whether they be used in a trades dispute or elsewhere*.

* * * * * *

It has been suggested by those opposed to Sec. 266c of this bill that it is class legislation. Such an assertion mistakes the meaning of the term. It is not legislation which confers upon the employer or the employee or upon those seeking employment any immunity or privilege *which others do not enjoy*, nor does it take away from either employer or employee any right *which others might exercise*. It does not even undertake to codify the rights of employer and employee in trades disputes, a thing which has been done elsewhere and may, soon or late, have to be done here.

It does undertake to regulate to a limited extent *the procedure in cases arising from such disputes*, but in doing so it simply an-

nounces rules *common to other cases in equity*, and it does declare that certain acts *lying within the rights of the parties* shall not be infringed upon by any injunction."

During the same discussion of this section, Congressman Swagar Sherley, of Kentucky, said of its purpose and effect (Cong. Rec., Vol. 48, Pt. 12, appendix, p. 935):

"Mr. Sherley. I come now to Section 266c, which I do desire to discuss, as some of its provisions are evidently worrying gentlemen who are in doubt as to how far they go relative to boycotts. In my judgment, the proposed law does not prevent the issuing of injunctions in matters of *secondary boycott*. We use the word 'boycott' in a rather loose way. Sometimes we mean by it what is known as the primary boycott, sometimes and usually we mean by it what is known as a *secondary boycott*. There is nothing here that prevents a Court of equity from dealing with the *boycott in that secondary aspect*. As to a boycott in its primary effect, I do not believe the power of a Court of equity ought to go to the length of issuing a writ of injunction.

The President of the United States when a Judge defined the secondary boycott, and defined it in substance as one in which the element of coercion as to a third party obtained. It is where there is an attempt upon the part of one party to a controversy to say to a third party, 'If you do not cease to patronize or aid the first party, we in turn will boycott you and punish you for your intercourse and trade with that party.'

This Act does not anywhere undertake to justify that proceeding or to say that the court shall not issue a writ of injunction. Judge Taft in *Toledo Company* v. *Pennsyl-*

vania Company, 54 Federal Reporter, used this exact language:

> 'As usually understood a boycott is a combination of many to cause a loss to one person by coercing others against their will to withdraw from him their beneficial business intercourse, through threats that unless those others do so the many will cause similar loss to them.'
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> • • • • • •
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> Then the Section goes on to say:
>
> 'And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment.'

Does anybody here believe a court of equity ought by a writ of injunction to be able to compel a man to continue in the relationship of servant and master? The very best decisions of the most learned courts in America have long ago declared that a Court of Equity would not issue an injunction to compel a man to maintain the relationship of employee to an employer—

> 'Or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do.'

That is not the secondary boycott. If you did not have the word 'peaceful' there, some such argument might be made; but can it be contended that any great harm is coming to the land by virtue of the right of one man to peacefully offer to another reasons and arguments why he should not continue the relation of employee to an employer? And all the suppositious cases of wrong made

legal by the section that so greatly alarm gentlemen are not exempted by the section: *because they are not peaceful. The word has a much wider meaning than the opposite of violent.*

* * * * * *

Mr. Martin, of South Dakota. Will the gentleman yield?

Mr. Sherley. For a brief question.

Mr. Martin, of South Dakota. I suppose if there is any provision in the bill that would permit a secondary boycott, it is what the gentleman has just read. I want to ask him, in case A seeks to dissuade B from patronizing C by stating to B that if he patronizes C he, A, will withhold his patronage from B, would that, in the gentleman's view, be a *peaceful persuasion?*

Mr. Sherley. It would not. *It would be a secondary boycott and is not embraced within the exemptions of this bill, in my judgment. (Applause.)*"

Judge Hough, in his opinion (Record, p. 219), concedes the disastrous effects to workmen and employers of the construction of Sections 20 and 6 of the Clayton Act which he adopts. He, nevertheless, holds that Congress deliberately intended to enact a law which would produce that result. He thinks the language of those sections ambiguous, susceptible of two meanings, one broad and destructive, the other narrow and harmless, and since he thinks that he must either hold that Congress designed to do an evil thing, or what he says is a practically futile thing, he chooses the first alternative. It does not seem to have occurred to him that Congress, recognizing the disastrous effect of the law, as construed by him which he has

so clearly pointed out, purposely restricted the provisions of Section 20 to the limited class of cases to which he says it would apply, under the construction of it which he rejects. Certain it is that Congress purposely and deliberately did so restrict it. The legislative history of the section and the debates upon it prove it.

POINT II.

The defendants are engaged in a combination and conspiracy to injure the plaintiff's good will, trade and business, and such a combination is unlawful at common law.

The dissenting opinion of Judge Rogers clearly sustains this point and cites abundant authority for his conclusion. However, the principal cases in support of our conclusion as to the common law are herewith enumerated:

Shine v. *Fox Bros. Mfg. Co.*, 156 Fed., 337.

Auburn Draying Co. v. *Wardell*, 227 N. Y., 1; 178 A. D., 270; 89 Misc., 501.

Irving v. *Joint District Council*, 180 Fed., 896.

Huttig Sash & Door Co. v. *Fuelle*, 143 Fed., 363.

Purvis v. *Local Union*, 214 Pa. St., 348.

Purington v. *Hinchliff*, 219 Ill., 139.

Lohse Patent Door Co. v. *Fuelle*, 114 S. W., 997 (Mo.).

Moores v. *Bricklayers*, 23 *Law Bull.*, 665 (Ohio).

Thomas v. *Cincinnati etc. Ry. Co.*, 62 Fed., 818.

Toledo A. A. & M. Ry. Co. v. *Penn*, 54 Fed., 730.

Thompson Mach. Co. v. *Brown*, 104 Atl., 129 (N. J.).

Employing Printers v. *Dr. Blosser*, 50 S. E., 353 (Ga.).

Purington v. *Hinchliff*, 219 Ill., 139.

Seubert v. *Reiff*, 98 Misc., 402; 164 Supp., 522.

Schlang v. *Ladies' Waist Workers*, 124 Supp., 289; 67 Misc., 221.

Burnham v. *Dowd*, 104 N. E., 841 (Mass.).

Attempts are being made to compel neutral parties—purchasers, truckmen and advertisers—to discontinue their dealings with the plaintiff by strikes and threats thereof, so that the presses can be neither advertised, purchased, carted, installed nor operated. This is the very essence of a secondary boycott.

> "The combination charged falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes and there is no doubt that (to quote from the well known work of Chief Justice Erle on Trade Unions) *'at common law every person has individually and the public also has collectively, a right to require that the course of trade should be kept free from unreasonable obstruction.'*"

Loewe v. *Lawlor*, 208 U. S., 274, 288.

The primary objection of the plaintiff to the combination set forth in this case is that its customers or possible customers are threatened with such consequences if they deal with the plaintiff, that they are deprived of their freedom of choice and do not dare to deal with the plaintiff. In this way the ordinary opportunities of trade, which should be open to the plaintiff, are closed.

> "It creates a motive for business action inconsistent with that freedom of choice out of which springs the benefit of competition to the public."
>
> *Martell* v. *White*, 185 Mass., 255.

The cases cited fully sustain our views, and in citing them we limited ourselves to strikes against the use of articles. The other class of boycott cases which are based on the same fundamental principle is covered by the following citations:

Barr v. *Essex Trades Council*, 53 N. J. Eq., 101.

Beck v. *Teamsters' Protective Union*, 118 Mich., 497.

Gompers v. *Buck Stove & Range Co.*, 221 U. S., 418.

Callan v. *Wilson*, 127 U. S., 540; 32 L. Ed., 223.

Branson v. *Industrial Workers*, 95 Pac., 354 (Nev.).

Casey v. *Cincinnati Typo. Union*, 45 Fed., 135.

Crump v. *Commonwealth*, 84 Va., 941.

Ertz v. *Produce Exchange*, 79 Minn., 140.

Evenson v. *Spaulding*, 130 Fed., 517.

Gray v. *Building Trades Council*, 91 Minn., 171.

Beattie v. *Callanan*, 82 A. D., 7; 81 Supp., 415.

Matthews v. *Shankland*, 56 Supp., 123; 25 Misc., 604.

Hopkins v. *Oxley Stove Co.*, 83 Fed., 912.

Lowe v. *California State Federation*, 139 Fed., 71.

Lucke v. *Clothing Cutters*, 77 Md., 396.

My Maryland Lodge v. *Adt*, 100 Md., 283.

National Telephone Co. v. *Kent*, 156 Fed., 173.

Rocky Mt. Telephone Co. v. *Montana Fed.*, 156 Fed., 809.

Seattle Brewing Co. v. *Hansen*, 144 Fed., 1011.

State v. *Glidden*, 55 Conn., 47.

Baldwin v. *Escanaba*, 130 N. W., 214 (Mich.).

A. F. of L. v. *Buck Stove & Range Co.*, 33 App. (D. C.), 83; 32 L. R. A. (N. S.), 748.

Harvey v. *Chapman*, 115 N. E., 301 (Mass.).

Martin v. *McFall*, 63 N. J. Eq., 91.

Webb v. *Drake*, 26 So., 791 (La.).

Wilson v. *Hey*, 83 N. E., 928 (Ill.); 16 L. R. A. (N. S.), 85.

Jensen v. *Cooks & Waiters*, 39 Wash., 531.

Hitchman Coal & Coke Co. v. *Mitchell*, 245 U. S., 229.

The strikes declared against the complainant's customers are unlawful because calculated and intended to injure the customers, and not for the pur-

pose of improving the conditions of employment of the strikers.

Pickett v. *Walsh*, 192 Mass., 572.
Burnham v. *Dowd*, 104 N. E., 841.

We do not question the workers' right to strike against machinery or materials which are inherently objectionable to them, but no such right exists where the purpose is to force that employer to cease patronizing some manufacturer a thousand miles away with whom the workers have no legitimate connection. A strike for such a purpose is one to injure and not to improve the conditions of employment.

In the case of *Pickett* v. *Walsh* (*supra*) the Court said:

> "In our opinion organized labor's right of coercion and compulsion is limited to strikes against persons with whom the organization has a trade dispute. Or, to put it in another way, we are of opinion that a strike against A, with whom the strikers have no trade dispute, to compel A to force B to yield to the strikers' demands, is an unjustifiable interference with the right of A to pursue his calling as he thinks best."

Judge Taft's decision in the case of *Thomas* v. *Cincinnati R. Co.*, 62 Fed., 818, and the case of *Moores* v. *The Bricklayers' Union*, 23 *Law Bull.*, 665 (Ohio), very clearly and forcibly expressed this doctrine.

Any strike is a combination calculated to injure another and is not justifiable or allowable except where the strikers *themselves* are seeking an improvement in their conditions of employment. The absence of such a justification in calling strikes against the complainant's customers and the fact

that they are but a scheme of coercion to disrupt business relations between the complainant and its customers, condemns them as illegal.

Where, as in this case, the object of the combination is the closed shop and the enforced exclusion of the unorganized workman, the privileges of the combination are more limited.

> *Tunstall* v. *Stearns*, 192 Fed., 808.
> *Davis Machine Co.* v. *Robinson*, 41 Misc. (N. Y.), 329.

The case of *Auburn Draying Co.* v. *Wardell* (*supra*) and not the case of *Bossert* v. *Dhuy*, 221 N. Y., 342, on which Judge Hough relied in dealing with the common law, is the New York decision most in point. The *Bossert* case is distinguishable on the following grounds:

(1) The *Bossert* case was limited to a combination of carpenters seeking to promote the sale of products made by affiliated carpenters, while in this case the defendants called upon the public generally to discontinue using presses made by the plaintiff and even sought to prevent their being exhibited to the public. In the *Bossert* case the Court says:

> "In the case now before us, if the defendants had called upon the public generally to discontinue using the plaintiff's material and had sought to prevent all persons by communications, written or otherwise, from dealing with the plaintiffs, their acts would have been illegal."

In the case at bar the defendants conducted a general boycott against the plaintiff's presses, even

to the point of preventing their public exhibition and advertisement through the National Exposition Company, when their stated object was to deprive the plaintiff of an opportunity of obtaining "a lot of orders" (fols. 332, 362-363). The printing trades, which have no direct interest in the building of presses, are called upon to aid in the conduct of this general boycott. The circular issued by defendant Keppler and President Johnson invites the Allied Printing Trades to influence their employers not to let contracts to the complainant (fols. 143-148). The circular of April 4, 1914, after referring to the complainant and another, requests the printing trades "to prevent the installation of this unfair machinery and also persuade, if possible, fair employers from letting further contracts for machinery to either of these firms" (fols. 150-154). The printing pressmen, referring to the complainant, passed resolutions to "use our influence to prevent the placing of orders for presses manufactured under unfair conditions" (fols. 195-200). Resolutions passed at the St. Louis Machinists' conference are of the same general character (fols. 163-164). A general circularization against the complainant was to be carried on (fol. 290), and it was generally sought to prevent sales (fols. 209, 288) by putting the company on the unfair list (fols. 290, 324).

(2) The case presents a malicious combination to injure the complainant within the meaning of the *Bossert* decision, for it extended beyond the activities of the machinists to other trades having no direct interest to subserve. As was said in the *Bossert* case:

> "An action for a direct and primary purpose in the interest of individuals or a combination of individuals, taken in good faith to advance the interest of the individuals or combination, may be lawful, while a remote and secondary action, which carries with it a degree of malice as a matter of law, is illegal."

Throughout the evidence it appears that the Machinists' Union carried on this boycott in conjunction with the pressmen and Allied Printing Trades, having no direct interest in the business of building presses, and since the machinists instigated this activity on the part of other trades and are members of the same conspiracy, their conduct must be judged by the tests applicable to the other trades. The machinists took up this boycott at the convention of the Pressmen's, Stereotypers' and Bookbinders' Unions (fol. 130), and the pressmen at least passed resolutions joining in the boycott against the complainant (fols. 195-200). These pressmen and printing trades had no interest in the controversy to justify their participation, and they are even barred from the work of erecting presses by the rules of the Machinists' Union (fols. 166-168, 215-222, 264-265). Neither do the teamsters have any direct interest, and the mere fact that they are affiliated with the Machinists' Union as a helpers' union does not create any solidarity of economic interest which the law can recognize. Malice at law is to be inferred from the hostile activities of these disinterested trades, as well as from the various statements of the defendants as to their intention to injure the complainant. Because of this malice, the defendants concentrated their attention upon the complainant at the exhibi-

tion, while permitting another non-union concern, the Oswego Machine Company, to exhibit (fol. 329).

This action of several different trades joining in a general appeal to the public to boycott the complainant, is a malicious combination within the meaning of the Bossert and Auburn Draying Company decisions.

(3) In the case at bar the defendants seek to induce breaches of contract and state themselves that they have prevailed upon many publishers to cancel orders (fol. 122). Their purpose in this respect was very clear in the case of the Exposition Company.

(4) In this case the defendants seek to prevent the hauling and transportation of presses within the City of New York by truckmen who are common carriers and not directly interested in the building of presses.

(5) The defendants also threaten to interfere with the operation of the presses by the pressmen (fols. 289-290), to prevent their being repaired (fols. 208-209), and to prevent their erection by either union or non-union men in the buildings (*Italian Herald* job). It is one thing to strike against non-union men being employed with union men in the erection of buildings, but it is quite another thing to strike against non-union men installing machinery or equipment which is no part of the construction work.

In applying the common law, Judge Hough also makes the mistake of deciding that the decisions of the Courts of New York State are controlling

as to the wrongfulness of such a combination under the common law. Such a question is one calling for independent decision by the Federal Courts.

B. & O. R. R. v. *Baugh*, 149 U. S., 368; 37 L. Ed., 772.

Burgess v. *Seligman*, 107 U. S., 33; 27 L. Ed., 359.

Smith v. *Alabama*, 124 U. S., 465; 31 L. Ed., 512.

The independence of the Federal Courts in such matters has been demonstrated on several occasions. Although the State Courts of Montana uphold the secondary boycott (*Pierce* v. *Stablemen's Union*, 103 Pac., 324), the Federal Court sitting in Montana reached a contrary conclusion (*Rocky Mt. Telephone Co.* v. *Montana Federation*, 156 Fed., 809); although the State Courts of California uphold the secondary boycott (*Parkinson* v. *Building Trades*, 98 Pac., 1027), the Federal Court sitting in that State held the contrary (*Loewe* v. *Cal. State Fed.*, 139 Fed., 71).

It is submitted that under the weight of authority of Federal and State decisions, the combination is illegal at common law.

POINT III.

The combination unlawfully seeks to prevent truckmen who are common carriers from performing their common law duty of serving those who purchase complainant's presses.

There can be no doubt that the Britton Trucking Company, which was engaged in a general trucking business employed "by different shops around town" (fol. 268), was a common carrier, even though its business was limited to the hauling of large machinery. (*Jackson Architectural Iron Works* v. *Hurlbut*, 158 N. Y., 34; 10 C. J., 49; *Heumann* v. *M. H. Bowers Co.*, 175 A. D., 627; 162 Supp., 590.) The fact that there is a combination among defendants to prevent truckmen as common carriers from hauling printing presses manufactured by the complainant, is beyond dispute. Deering says to the purchasers of complainant's presses: "Truckmen and helpers on these machine moving trucks are all now in the machinists' union, and they will not haul any machines. • • • You cannot haul out the machinery and it is no good to you on account of this strike at Battle Creek" (fols. 304-306). He told Britton, the truckman, "not to cart any Duplex presses and if I did there would be trouble" (fol. 271). He told Britton not to haul a press for Nicoletti Bros., "it would make trouble for me" (fol. 269), and Britton accordingly refused to haul the press because Deering "would haul the men off the job" (fol. 269). When Britton hauled the press for the *New York Law Journal* Deering "stopped the job" (fol. 270). "He told them to quit the job" (fol. 270). When

Britton carted the New York press for the *New York Law Journal* Deering knocked them off and Britton was obliged to finish the job with non-union men (fol. 272). Deering "knocked them off on two or three jobs" (fol. 274). The defendants, therefore, announced and carried out a comprehensive plan to prevent complainant's presses from being hauled by common carriers in New York City, and such a combination is clearly unlawful.

The common law duty of a common carrier to serve the public impartially is well recognized, and failure to perform that duty being a tort (*Pittsburgh Ry. Co.* v. *Morton*, 61 Ind., 539; *Michie on Carriers*, Sec. 381), the wrongfulness of the defendants' conduct in coercing a common carrier by strikes to commit such a tort is too clear for argument. This was the doctrine of the decision of Judge Taft in the case of *Toledo A. A. & N. P. Ry. Co.* v. *Penn. Co.* (*supra*), where an injunction was issued against the Railroad Brotherhoods to prevent them ordering strikes against any company which furnished the complainant with connecting facilities or received or handled the complainant's freight or cars. In that case Judge Taft said:

> "But it is said that it cannot be unlawful for an employee either to threaten to quit or actually to quit the service when not in violation of his contract, because a man has the inalienable right to bestow his labor where he will and to withhold his labor as he will Generally speaking, this is true, but not absolutely. If he uses the benefit which his labor is or will be to another by threatening to withhold it or agreeing to bestow it, or by actually withholding it or bestowing it, for the purpose of inducing, procuring or compelling others to commit an unlawful or

> criminal act, the withholding or bestowing of his labor for such a purpose is itself an unlawful and criminal act. The same thing is true with regard to the exercise of the right of property. • • • Herein is found the difference between the act of the employees of the complainant company in combining to withhold the benefit of their labor from it and the act of the employees of the defendant companies (the connecting railroads) in combining to withhold their labor from them. That is the difference between the strike and the boycott."

In the case of *Thomas* v. *Cincinnati Ry. Co.* (*supra*), the American Railway Union had ordered a strike against railroads centering in Chicago if they hauled the cars of the Pullman Company where the men were out on strike, and Judge Taft held it to be unlawful.

POINT IV.

The combination unlawfully seeks to induce the complainant's customers to violate their contracts with the complainant.

Hitchman Coal & Coke Co. v. *Mitchell*, 245 U. S., 229.

Dr. Miles Medical Co. v. *J. D. Park & Sons*, 220 U. S., 373.

Bitterman v. *Louisville & Nashville R. R. Co.*, 207 U. S., 205.

Angle v. *Chicago & St. Paul Co.*, 151 U. S., 2.

American Malting Co. v. *Keitel*, 209 Fed., 351.

At the time of the expositions the defendants stated again and again that the entire enterprise would be tied up by strikes unless certain written agreements with the complainant were canceled, and they even went so far as to consider an offer to defend the Exposition Company against any suit which might be brought by the complainant for such a breach of contract. Other customers of the complainant were also urged to cancel their written contracts, and there can be no question, under the law as now settled by the Supreme Court of the United States, that such conduct is unlawful and, in appropriate cases, may afford a proper case for protection by injunction.

The fact that there were existing contracts which this suit was designed to protect and did protect from the wrongful invasion of the defendants entitled the complainant to a decree.

In the case of *Dr. Miles Medical Co.* v. *John D. Park & Sons*, 220 U. S., 373, Mr. Justice Hughes says:

> "The complainant invokes the established doctrine that an actionable wrong is committed by one who maliciously interferes with a contract between two parties and induces one of them to break that contract, to the injury of the other, and that, in the absence of an adequate remedy at law, equitable relief will be granted."

The malice which it is essential to prove in such cases is not express malice, but "legal malice," and in none of the cases in our headnote was there any

express or wanton malice. In the case of *Medical Co.* the defendant was merely the interests of competition.

Upon all of the grounds set forth in it is urged that the judgment be reversed the complainant should be awarded prayed for in the complaint.

Respectfully submitted,

DANIEL DAVENPOR
WALTER GORDON
Counsel for

of Dr. Miles
ly acting in

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d the relief

ORT,
S MERRITT,
for Appellant.

No. 45

JAN 10 1909

Supreme Court of the United States

DUPLEX PRINTING PRESS CO.,

Appellant

against

EMIL J. DEERING, *etc., et al.,*

Appellees

BRIEF FOR APPELLEES.

FRANK X. SULLIVAN,

Solicitor for Appellees.

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Supreme Court of the United States

DUPLEX PRINTING PRESS COMPANY,
Complainant Appellant,

against

EMIL J. DEGENS and WILLIAM BRAMLEY, individually and as Business Agents of District Council No. 15 of the International Association of Machinists; MICHAEL T. NEYLAND, individually and as Business Agent of Local Lodge No. 328 of the International Association of Machinists; and EDWARD T. NELSON, individually and as Business Agent of the Riggers' Protective Union; JACOB KEPPLER, individually and as Vice President of the International Association of Machinists,
Defendants Appellees.

Statement.

This is an appeal from a final decree dismissing the complaint and denying the plaintiff's right to an injunction after a trial, which was affirmed by

the Circuit Court of Appeals of the Second Circuit (fols. 237-238).

Cause of Action Set Forth in the Complaint.

The substance of the complaint is that the defendants are engaged in promoting an illegal combination or conspiracy for the sole purpose of interfering with the complainant's business and interstate commerce.

The Duplex Printing Press Company, the appellant, manufactures the "Duplex Printing Press," at Battle Creek, Michigan (fol. 11).

The only defendants served with process in this action were Emil J. Deering, William Brandey and Michael T. Neyland. The defendants, Deering and Brandey, are Business Agents of a voluntary, unincorporated association known as District Council No. 15 of the International Association of Machinists, operating exclusively in the City and State of New York. Michael T. Neyland is Business Agent of another voluntary, unincorporated association known as Local Lodge No. 328 of the International Association of Machinists, existing and carrying on business solely within the City and State of New York. Each of these voluntary, unincorporated associations have a President and Treasurer, and no process was served on either of these officers and therefore jurisdiction was not obtained over these associations as they were not served in accordance with Section 1919 of the Code of Civil Procedure of the State of New York. Process was not served on any officer of the International Association of Machinists, which is a separate, voluntary, unincorporated association, having its main office and place of business at Washington, D. C. Members of District

Council No. 15 of the International Association of Machinists and Local Lodge No. 328 of the International Association of Machinists, by reason of their membership in these associations, automatically became members of the International Association of Machinists, which is the parent body, and remain as such as long as the District Council and the Lodge Local remain in good standing with the parent body. At the time of the trial of this action the defendants, Deering and Bramley and Neyland, were members of the International Association of Machinists, the voluntary, unincorporated associations to which they belong, as previously described, being at the time in good standing with the parent body.

For the purpose of brevity the International Association of Machinists will hereinafter be referred to as the "International Association"; District Council No. 15 of the International Association of Machinists will hereinafter be referred to as "District Council"; and Local Lodge No. 328 of the International Association of Machinists will hereinafter be refered to as the "Local Lodge."

The International Association of Machinists' members are scattered throughout the United States and Canada, and is composed of local lodges and district councils formed throughout the territory above mentioned (fol. 107).

A Short Summary of the Undisputed Evidence which will hereafter be quoted and referred to.

In the year 1909 the "International Association" inaugurated the policy of advocating an eight hour day and a minimum rate of wage for its members employed in industries manufacturing printing presses and paper making machines. The purpose

of inaugurating this policy was to improve the condition of the members of the International Association employed in the industries above mentioned by reducing the hours of labor and increasing the rate of wage therefor. Between the years 1909 and 1913 the International Association was successful in having a great majority of the employers in the industries above mentioned adopt the eight hour day and the minimum rate of wage. During all of this period the defendants and the International Association were in communication with the appellant for the purpose of securing the adoption of this plan by it and it was understood by the appellant that it was not an attempt to establish these conditions solely in the appellant's plant but that it was part of a comprehensive movement in the trade to establish these conditions in the industries above referred to.

From 1909 to August, 1913, the differences between the defendants, the International Association, and the appellant resulted in nothing more than argument and discussion. During all of this period the members of the International Association handled the product of the appellant when ever called upon to do so and it was not until after a lockout or strike occurred at the plant of the appellant at Battle Creek, Michigan, on August 27, 1913, that the members of the International Association refused to handle the appellant's product. The appellant refused to establish the eight hour day and pay a minimum rate of wag eas adopted by the International Association in 1909 and refused to employ the men of the International Association to manufacture its product at Battle Creek, Michigan. After the strike at Battle Creek, Michigan, the International Association took this position with the appellant: That it would do all of the appellant's work or none of it, and that if

its members were not employed to manufacture the presses at Battle Creek, Michigan, then its members would not handle and erect the presses of the appellant when manufactured and shipped to other parts of the country, and also that they would not handle and erect these presses manufactured by men employed more than eight hours per day and receiving less than the minimum rate of wage adopted, as previously stated.

In August, 1913, after an almost uninterrupted series of conferences running from 1909, the International Association determined that a strike should be inaugurated at the appellant's plant at Battle Creek, Michigan, unless the eight hour day was established and the minimum rate of wage adopted put in force. Before that order was transmitted to the local union at Battle Creek, Michigan, the appellant discharged some nineteen men and it was alleged by others working in the plant that in the discharge of these men the appellant had discriminated against union men. After the discharge of these nineteen men, the other union men in the plant ceased work and the strike followed and this strike was in progress at the time the order of the International Association above mentioned was received. The order of the International Association was directed as a means of effecting the establishment of the eight hour day and the minimum rate of wage in the plant of the appellant. A perusal of the evidence will disclose that since the strike on August 27, 1913, the members of the International Association have refused to work for the appellant and to handle its product wherever it might appear.

The real purpose of this action is not to enjoin the defendants or to limit the action of the International Association but is to procure the court in effect to force the International Association men

throughout the United States to handle and erect the printing presses of the appellant notwithstanding that the appellant has locked out the union men at Battle Creek, Michigan, and the union men there have struck against the appellant; of having this court declare that the refusal of the International Association members to handle and erect the appellant's presses constitute a conspiracy against the appellant and is an obstruction to interstate commerce.

The Undisputed Evidence.

The plaintiff offered in evidence several articles appearing in the "Machinists' Monthly Journal" which is the mouthpiece of the International Association and various resolutions and letters emanating from the International Association or allied trades upon the theory that the defendants must be charged with knowledge of the matters therein referred to and the defendants concede that it was in furtherance of the purpose and plan stated in this documentary evidence that their activities were directed. Vice-President Keppler of the International Association of Machinists gave a historical resume of the efforts of the association to establish the eight hour day and the minimum rate of wage and it appears as a part of the evidence in support of the appellant's cross-bills (72 173):

> "During the year of 1909, I had the pleasure of attending two conventions, of the Printing Pressmen, held in Omaha, Nebraska, and of the Photo Engravers, in Milwaukee, Wisconsin, during which time a better understanding was reached whereby their members have demanded I. A. of M. cards when machinists were being installed or re-

gained in printing houses. That in itself has helped us not only to organize some firms, but has been the means of maintaining organization and securing the long hours for eight-hour day for our members in localities where organized, with greater pay and better working conditions. Further, it was the means through which numerous other firms granted better conditions; among them, permit me to mention a few facts relative to the R. Hoe & Co. of New York, they being the largest in this line, where the following was secured since 1909, and starting practically with no working organization."

Mr. Merritt then read an extract from the report of Vice-President Keppler on page 25 of same proceedings, as follows:

"Strikes have also been in progress in this line for some time for eight-hour day at the Oswego Machine Co. of Oswego, New York, and the Duplex P. P. Co. of Battle Creek, Mich.; both had been operating on the ten-hour basis.

"While conferences are being held with various employers in the industry, the cry of their competitors is continually heard, especially referring to these firms mentioned in the *Typographia* of October 25, 1913.

"Vice-President Keppler wishes to again call your attention to the fact that a majority of the printing firms of New York City and Plainfield have granted an eight-hour day on the installment plan, and unless their competitors are brought to the same terms we are liable to lose all the conditions we have already gained, or face a big strike of printing machinery shops in

> the spring. You are therefore urged to get busy on the list of firms that will be appended to this issue of the *Organizer*" (fol. 17, 176).

In the Machinists' Monthly Journal for October 10, 1913, which forms part of the appellant's case, appears the following:

> "As the General Executive Board, during its session in June, this year, had sanctioned a strike at the Duplex Printing Press shop, and other ten-hour shops in the printing machinery industry, there was nothing else to do but to carry out their instructions, and, therefore, wired our local organizer, Brother Thompson, who was on the ground, to declare a strike, which was done August 27" (fols. 113-114).

The appellant's part was working its men ten hours a day and refusing the eight-hour schedule demanded by the International Association. Mr. Stone, the President of the appellant, on cross examination, stated:

> "Mr. Keppler and Mr. Edwards had continuously urged arbitration of the strike. We are working our men ten hours a day at Battle Creek at the present time, and we pay them from $2 to $10 a day, but we do not have any uniform minimum scale.
>
> "During all this time from 1909 to 1913, up to the time of the strike, Mr. Keppler was urging me to establish an eight-hour day and the union rate of wage as a minimum scale.
>
> "Q. He had told you at all of these con-

ferences and subsequent to 1909 and between that date and 1913, that there was an effort being made by the International Association of Machinists to create an eight-hour day in this industry that you were engaged in. A. Yes.

"Q. And he told you that in this whole industry he was trying to create union conditions as to the payment of a minimum wage for the eight hours of labor, did he not? A. Yes.

"Q. Certain letters were sent to you which were received by others, as far as you know? A. Yes.

"Q. And the effort of the International Union was not only to have you establish an eight-hour day and pay a minimum rate of wage to the men employed in the country where your industry was involved; you know that and had been told that? A. Yes.

"Q. So you, as far as this union was concerned in their requests and demands upon you, they were similar to the demands made upon the Hoe Company, upon the Goss Company and upon the other printing press manufacturers in the country; that is a fact, is it not? A. I simply took the position that they had no right to make any demand.

"Q. I appreciate what your position was, but I am asking you a question; their demands were similar? A. If you call it a demand; I do not recognize a demand of that sort.

"Q. But that is the fact, that they were asking the same from others? A. Asking; yes.

"Q. That they were asking from you? A. Yes.

"Q. So that they did not select you from all the printing press manufacturers or men in this industry to ask these things of, did they? A. No.

"Q. Or attempt to enforce them? A. No (fols. 396-400).

Notwithstanding its refusal to adopt this schedule the International Association had not declared a strike and had continued to handle and erect the complainant's presses and union pressmen operated them. Mr. Stone testified:

"I had my first interview with Mr. Keppler with respect to the erection of presses at the time the press came to the *New York World*, and we were deeply interested in having that press erected as speedily as possible.

"Q. And after a conference Mr. Keppler stated to you that that he was going to allow and permit the men to finish the erection of the machine? A. Yes.

"Q. And he did say 'permit and allow' did he not? A. Yes, although that incident and the incident relating to the *San Francisco Sun* were before the men were discharged in August, 1913, and from the time of the agreement with Keppler the presses continued to be erected by members of the Machinists' Union without trouble, until the strike in August, 1913, and it was after that date that the Machinists' Union refused to handle our machinery for the purposes of erection (fols. 109, 110).

The appellant introduced into evidence a resolution passed at a convention of the International Printing Pressmen and Assistant's Union (fols. 198, 199) and a letter written to the President of the appellant by George L. Berry (fols. 452, 453) and attempted to argue from the resolution and letter that a general scheme and secret understanding existed between the International Association and the International Printing Pressmen and Assistants' Union to prevent the operation of the presses of the appellant. The resolution as adopted by the International Printing Pressmen & Assistants' Union pledged "*moral support*" and reads as follows:

> "Resolved, That we pledge our moral support to those now on strike for eight (8) hours against the Duplex Printing Press Company, at Battle Creek, Mich., to the end that we do intend, wherever possible to protect the fair employer, but will prevent if possible, the installation of presses by scab labor, and also use our influence to prevent the placing of orders for presses manufactured under unfair conditions; and further, that we continue to demand I. A. of M. cards where machinery is being installed or repaired, and that these resolutions be given as much publicity as possible among printing pressmen and printing trades" (fols. 198, 199).

The letter written by Mr. Berry to Mr. Stone, the President of the appellant, states the desire of Mr. Berry to act as "mediator or arbitrator" in settling the industrial difficulties existing between the appellant and the International Association.

The uncontroverted evidence, however, discloses that after the press was installed in the New York Law Journal that it was operated by union pressmen, members of the International Printing Pressmen and Assistants' Union. Mr. Cosgrove, the manager of the New York Law Journal, testified:

> "Q. And then after it went into your plant the members of the Pressmen's Union operated it and have since operated the press; is that not a fact? A. Surely, we are a union shop; we have got to be" (fol. 310).

There was not a scintilla of evidence adduced on the trial which disclosed that the appellant had lost any sales by reason of the defendants' activity or that the presses of the appellant was not operated after they were installed. The difficulty that the appellant met with was in the installation and erection of its printing presses and this difficulty arose by reason of the fact that the members of the International Association refused to work on the appellants' product. In every specific instance which the appellant presented to the court the fact developed that after the press was installed it was operated by union pressmen. Although it appears undisputedly that the appellant does about seven per cent. of the business in this country in the manufacture and sale of presses, the appellant neither alleged nor proved that any union pressman had ever refused to operate the appellant's presses and this Court will take judicial notice of the fact that the New York Law Journal has been published uninterruptedly since October, 1913, the date when the appellant's press was installed in that plant.

POINT I.

The means employed by the defendants to secure an eight hour day and minimum rate of wage throughout the trade are authorized by the Clayton Amendment to the Sherman Anti-Trust Law.

U. S. Statutes at Large, Vol. 38, Chap. 323.

Sections 6 and 20 of the Clayton Bill, are as follows:

> "Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.
>
> "Sec. 20. That no restraining order or injunction shall be granted by any Court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent ir-

reparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the appellant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

In the year 1908, *Loewe v. Lawlor*, 208 U. S. 274, was decided by the United States Supreme Court. This was an appeal from a demurrer interposed by the defendants. After the demurrer was overruled the case was tried and in October, 1912, there was a judgment for the complainant for $252,130.00 which was subsequently affirmed in 1915 by the United States Supreme Court (*Lawlor v. Loewe*, 235 U. S. 522).

The question as to the legality or illegality of the acts of a labor union had been a mooted and unsettled question and the reason for this uncertainty is most concisely stated by Mr. Justice Holmes:

> "the ground of decision really comes down to a proposition of policy of rather a delicate nature concerning the merit of the particular benefit to themselves intended by the defendants, and suggest a doubt whether judges with different economic sympathies might not decide such a case differently when face to face with the issue." (See *Gill Engraving Co. v. Doerr*, 214 Fed. R. 110, note at bottom of page 120.)

This factor of economic sympathies, prior to the Clayton Amendment to the Sherman Anti Trust Law, rendered the question of what conduct was lawful so uncertain that it was not possible to safely direct the action of a combination of workingmen during a period of an industrial dispute. The economic sympathies of the court before whom their acts were to be construed was a primary factor to be considered. A court with sympathies opposed to activity of workingmen might be prone to declare their acts to be illegal and unlawful, with the result of a loss of liberty or property of

the members of the labor organization. On the other hand, if the court's economic sympathies were with the workingmen the same acts might be construed to be legal and lawful.

Whether the Clayton Amendment to the Sherman Anti Trust Act merely clarifies or amplifies the pre-existing law is immaterial. In any event it clearly states what may be done by a combination of workingmen formed into what is commonly designated as a labor or trade union.

When the Clayton Amendment was before Congress, it was recognized that the purpose of the provision with reference to labor was intended to change the law, or clarify the law as laid down by the Supreme Court in the Danbury Hatters case *(Loewe v. Lawlor, supra,)* and the Retail Lumber Dealers case, *(Eastern States Retail Lumber Dealers' Assn. v. U. S. 234 U. S. 600.)*

Senator Nelson spoke on this subject on September 30, 1914. The Congressional Record of October, 1914, page 17371, contains the following:

> "Now I come to the next provision, the boycott provision. In my opinion that provision includes both the primary and secondary boycott. There was only two classes of cases so far as I know, where the Supreme Court had passed upon this question. One was a case against laboring men; the other against retail lumber dealers. The former was in what is known as the Danbury Hatters case, where by secondary boycott, the workers broke up the industry of a manufacturer of hats in Danbury, Conn. The other was known as the Retail Lumber Dealers case, recently decided by the Supreme Court, in which retail lumber dealers throughout the country undertook to buy

cott every manufacturer and wholesale dealer who sold direct to customers in towns where these dealers were located. The Supreme Court applied the same rule that it did in the Danbury Hatters case and held that notwithstanding the Retail Lumber Dealers move with circumlocution and in a careful and studied manner by circulars and letters, it was nevertheless in fact a boycott, and the Court enjoined it and prohibited the continuance of it. . . . .

"So, Mr. President, when you study this bill from firs. to last, you will find when it comes to these trusts, monopolies and combinations, the bill deals with them in the most gingerly and harmless manner. It administers relief in homeopathic doses of the very slightest and feeblest kind. This is true as to labor organizations also. They imagine that they get a good deal out of the phrase in Section 6, declaring that labor is not an article of commerce. They imagine they get a good deal of relief out of the Section which provides that no injunctive relief shall be permitted except it involves property or property rights. They imagine they get immense relief from the requirement that in a few limited cases actions shall be tried by jury. When you sum it all up, they get almost as little out of this bill as the public at large gets out of the remedial sections of the bill in respect to trusts, monopolies and unjust combinations."

From the foregoing it affirmatively appears that it was the decision in the Danbury Hatters' case (*Loewe v. Lawlor, supra,*) that brought about the Clayton Amendment in Congress and unquestion-

ably it was the great publicity given to this case that created the sentiment in favor of the Clayton Amendment.

In *Loewe v. Lawlor*, 208 U. S., at page 301, Mr. Chief Justice Fuller said:

> "The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act and all these efforts failed so that the act remained as we have it before us."

See also opinion of Coxe, J., in Circuit Court of Appeals, 209 Fed. R. 721, at page 729.

To refuse to recognize the undisputed fact that the Clayton Amendment was intended to clarify the law in regard to the proper limits within which labor organizations might act in furthering the interests of their members would be to close our eyes to the situation, as it is obvious that the act was intended to define what could be lawfully planned and executed by the concerted action of labor associations in furthering the legitimate object of their creation.

A labor organization is formed for the benefit and protection of its members and is established for the purpose of securing for them a reduction in the hours of labor and an increase in wages. The union is based upon the idea that the individual workman cannot fully protect himself against employers but that by united action he can be better protected in the respects mentioned. It is supported by the dues of its members; the member paying for the benefits which he expects to realize from the organized action of himself and his co-workers. (*See Gallo v. Barton*, 161 A. D. 287, 294 N. Y. Rep.)

The court will take judicial knowledge of the fact that the toilers of our country are industrious law abiding citizens; that the homes of these workmen represent their principal savings and are regarded by them as their provision for the future. It is not a mere matter of general importance to them to know what they can and cannot lawfully do because a judgment rendered against them means that they are deprived of their liberty, their property and their home.

It is in contrast to imposing a fine upon one of the large industrial combinations because in that instance it simply results in a change of form of the organization and an increase of price of the commodity to the consumer.

The collection of the judgment in the Danbury Hatters' case (*Loewe v. Lawlor*, 208 U. S., 322) by sale and execution of the workingmen's homes could not be shifted from the shoulders of those directly bearing the burden to the public at large. It was a calamity for them, and the purpose of the Clayton Amendment was in part to prevent the recurrence of just such a catastrophe. It was enacted into statute clarifying and amplifying the laws relating to labor organizations and their activities so that the workingmen composing these organizations might know specifically just what could be lawfully done and what could not be lawfully done. The appellant in its complaint alleges that the International Association of Machinists and the local branches thereof and the members and officers of the association have been engaged in a combination or conspiracy to monopolize the machinists' trade throughout the country. This allegation is answered specifically by Section 6 of the Sherman Anti Trust Law, as amended by the Clayton Act. On this question the said section reads as follows:

"Sec. 6. Nothing contained in the Anti-Trust Laws shall be construed to forbid the existence and operation of labor * * * organizations or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the Anti-Trust Laws."

In order to indicate how exactly the defendants in carrying out the general purpose of the International Association, confined themselves to the means authorized by the Clayton Amendment, and while that act had not been finally passed at some periods of the defendants' activities it had already taken form and had been submitted to Congress, the following parallel columns are presented for the perusal of the Court:

Acts Authorized by the Clayton Amendment.

"Nothing contained in the anti-trust laws shall be construed to forbid or restrain individual members of such organizations (labor organizations) from lawfully carrying out the legitimate objects thereof."

Acts of Defendants.

The appellant's President on cross-examination testified:

"During all this time from 1909 to 1913, up to that time of the strike, Mr. Kepplor was urging me to establish an eight-hour day and the union rate of wage as a minimum scale.

"Q. He had told you at all of these conferences and subsequent to 1909 and between that

> date and 1913, that there was an effort being made by the International Association of Machinists to create an eight-hour day in this industry that you were engaged in? A. Yes.
>
> "Q. And he told you that in this whole industry he was trying to create union conditions as to the payment of a minimum wage for the eight hours of labor, did he not? A. Yes" (fols. 207-208).

Unquestionably the effort of labor organizations to secure an equalization of the hours of labor and rate of wages throughout a trade is not alone lawful but extremely beneficial both to employers and employees and in accomplishing this purpose they are regarded with favor and approval by the Courts of the community.

In *Lucker* v. *Lucore*, 209 Fed. R. 221, at 227, the Court said:

> "All must admit not only that they are lawful but that they are highly beneficial when legally and fairly consulted."

In *Wilson* v. *New*, 243 U. S. 342, in sustaining the constitutionality of the Adamson Act, fixing the hours of labor and minimum rate of wages for railroad employees, the Supreme Court of the United States said:

"To an employee a wage law may be of more vital consequence; being of the very essence of life."

In *Paine Lumber Company* v. *Neall*, 244 U. S. 459, at p. 471, Judge Holmes, speaking for the Court, said:

"We shall not believe that the ordinary action of a labor union can be made the ground of an injunction under those laws until we are so instructed by the New York Court of Appeals."

In *Bossert* v. *Dhuy*, 221 N. Y. 342, which is the last expression of the Court of Appeals of the State of New York involving the same question as that presented on this appeal, the Court said:

"Upon all of the findings before us the statement in the finding that there was a 'combination to organize' the non-union mills of Brooklyn' simply means that the Brotherhood determined to carry out the provisions of its constitution relating to non-union made material by insisting upon its enforcement and by imposing the penalties provided thereby in case of failure of any of its members to comply therewith."

In the Bossert case (*supra*) the Court also said:

"An association of individuals may determine if its members shall not work for specific employers of labor. The question, however, is as to its purpose in reaching such determination. If the determination is reached in good faith; for the purpose of

bettering the condition of its members and not through malice or otherwise to injure an employer, the fact that such action may result in causing injury to the employer does not constitute justification for issuing an injunction against enforcing such action."

Further in the Bossert case (*supra*), the Court said:

> "Certainly the condition complained of has no tendency to produce a monopoly of manufacture of building since the more successful it is the more competitors are introduced into the trade."

It is perfectly clear that the object sought by the defendants was legitimate and laudable and as such affords no ground for charging them with a conspiracy.

Acts Authorized by the Clayton Amendment.

"No restraining order or injunction shall be granted by any Court of the United States or a judge or judges thereof, in any case between an employer and employees * * * involving or growing out of a dispute concerning terms or conditions of employment."

Acts of Defendants.

The evidence adduced on the trial disclosed without contradiction that a dispute existed between the complainant and the defendants concerning the terms and conditions of employment, both as to hours and wage, which resulted as complainant states in a strike; defendants alleging a lockout, followed by a strike.

"August 22, I drafted a letter setting forth conditions for the inauguration of an eight-hour day, wage scale, overtime rates, apprenticeship system, etc. The same was mailed to the Duplex Printing Press Company, of Battle Creek, Michigan, also to some other employers in this industry, who are now operating under the eight-hour basis, as they had claimed that unless something was done with these ten-hour shops they, the eight-hour shops, would again be forced back to longer hour. I regret to say, however, that just about the time this letter reached the Duplex Printing Press Company word was received from Battle Creek that eleven of our members had been discharged, which was closely followed by eight more being let go, discrimination being alleged.

"As the General Executive Board, during its session in June, this

year, had sanctioned a strike at the Duplex Printing Press shop, and other ten-hour shops in the printing machinery industry, there was nothing else to do but to carry out their instructions, and, therefore, wired our local organizer, Brother Thompson, who was on the ground, to declare a strike, which was done August 27" (fols. 113-114).

The appellant in its brief attempts to draw an analogy between the case at bar and the case of *Paine Lumber Company* v. *Neal* (*supra*), and relies primarily in its argument upon the dissenting opinion written in that case. A careful reading of this dissenting opinion discloses that the court stated that Section of 20 of the Sherman Anti Trust Act, as amended (Clayton Amendment) did not apply because there was no dispute between employer and employee. In the case at bar the evidence discloses that a strike occurred on August 27, 1913, and continued and was in existence up to and including the time of the trial; that the dispute arose between employer and employee over the hours of labor and the questions of wages to be paid; and the facts as adduced on the trial disclose beyond peradventure of contradiction that this case falls directly with Section 20 and is not analogous to the case of *Paine Lumber Company* v. *Neall* (*supra*).

The position of the defendants in the case at bar

as previously stated, has been that the defendants will do all of the appellant's work or none of it; that it refuses to handle and erect the appellant's presses unless it can manufacture them.

The appellant's contention is that it desires to employ men ten hours a day without any basic minimum wage and to employ members of the International Association when it desires them to erect its presses when sent out from Battle Creek, Michigan, and the application in this action is primarily to compel the members of the International Association of Machinists to erect the presses of the appellant constructed under the conditions above referred to.

Acts Authorized by the Clayton Amendment.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert from terminating any relation of employment."

Acts of Defendants.

Mr. Preston, the general Secretary-Treasurer of the International Association of Machinists, testifying for the appellant, said:

"August 22, I drafted a letter setting forth conditions for the inauguration of an eight-hour day, wage scale, apprenticeship system, etc. The same was mailed to the Duplex Printing Press Company, of Battle Creek, Michigan, also to some other employers in this industry, who are now operating on the eight-hour basis, as they had claimed that unless

something was done with these ten-hour shops they, the eight-hour shops, would again be forced back to longer hours. I regret to say, however, that just about the time this letter reached the Duplex Printing Press Company word was received from Battle Creek, that eleven of our members had been discharged which was closely followed by eight more being let go, discrimination being alleged" (fol. 112, 113).

Immediately after the union men at Battle Creek, Michigan, were discriminated against the International Association declared a strike, (fol. 114). The action of the members of the International Association in "terminating" their relation of employment with the appellant is expressly authorized by the Clayton Amendment and was lawful prior thereto.

Cummings v. *National Protective Association*, 170 N. Y., 324.

Paine Lumber Company v. *Neall*, 244 U. S., 459.

Acts Authorized by the Clayton Amendment.

"or from ceasing to perform any work or labor."

Acts of Defendants.

What the defendants did and what each did appears as follows:

"Q. In other words,

any member of the International Association of Machinists would not be permitted to handle the product of the Duplex Company? A. Yes.

"Q. And he told you that the reason was because of the strike at Battle Creek? A. Yes.

"Q. But you could have men for use with anybody else? Did he not say that? A. In that show, on that occasion" (fols. 346-347).

The failure to handle the product of a concern against which a strike is in progress comes expressly within the language of the Clayton Bill authorizing members of a labor organization "from ceasing to perform any work or labor" and is also recognized as lawful and proper.

Paine Lumber Company v. *Neall*, 244 U. S. 459.

Bossert v. *Dhuy*, 221 N. Y. 342.

Acts Authorized by the Clayton Amendment.

"or from recommending, advising or persuading others by peaceful and lawful means so to do" (cease their work or labor).

Acts of Defendants.

The plaintiff's witness Burkle was one of the pickets for the International Association during the early part of the strike against the appellant. He testified:

"I was instructed to induce the men working

there to cease work, and attempted to persuade them, by argument, to cease work, and I was not told to assault anyone. When I spoke of the work being stopped on the machines I meant that the men who were employed on them had withdrawn their services" (fol. 225).

He also testified:

"I was out on strike and in New York City, and received orders from defendant Deering to be at the place of erection early Monday morning to find out who was going to erect the job and try and stop them. Henry Soeller, a former employee of the Duplex Company received similar instructions from Mr. Deering, and I went over to the Nicoletti Brothers' place to get hold of the erector Smith and try to get him to quit, but he would not do it. I stayed around there for three or four days and saw the press delivered by the drayman. I reported to Deering who

the erector was and my success in making him quit" (fols. 245-246).

It will be found that all that was done by anyone in behalf of the International Association or by or at the direction of the defendants was recommending, advising or persuading others not to work in handling or installing the presses of the appellant or attempting so to do. This comes exactly with the language of the above portions of the Clayton Amendment.

Acts Authorized by the Clayton Amendment.

"that no injunction shall prohibit any person or persons from ceasing to patronize or to employ any party to such dispute, or from recommending, advising or persuading others by peaceful and lawful means so to do."

Acts of Defendants.

The defendants went to numerous customers of the appellant, among others to the manager of the New York Law Journal. The defendant Deering called on him and Mr. Cosgrove testifies to the following conversation:

"You are going to put in a press next week?" I said, "No." He said, "Well, you have ordered a press," and I said, "Yes." He said, "Well, I will tell you there is a strike on at Battle Creek and you will not be able to have that press hauled to your place." I said, "No, I did not know that." He said, "Yes, there is a

strike out there and the truckmen and helpers on these machine-moving trucks are all now in the Machinists' Union and they will not haul any machines." I said, "What had that got to do with us?" He said, "I will tell you you cannot haul it because you cannot haul out the machinery and it is no good to you on account of this strike at Battle Creek." I said, "What do you want me to do?" And he said, "I will tell you. Go over and see Mr. Stone, in the World Building. Mr. Stone, I think, is President of the Duplex Company." And he said, "You better go over and see Mr. Stone and tell him that I was here and you can state to him the conversation we had here. Maybe your statement to him or your presence over there or your visit, will probably have some bearing on the strike that is now on at Battle Creek." I went over to see Mr. Stone and Mr. Dowe and they said

there was one strike there; one in Akron; and in Toledo; and in four; the power would be delivered into the plant. That was the end of the visit on Saturday." (fols. 294-295).

This is typical of the declarants' contact with the other patrons of the Hygeia Company.

The contact pursued with the other customers to which reference is made in the case differed in no substantial particular from that shown in the above quotation.

National Exposition Company.

This company was organized in 1912 (fol. 315), and among other things the company held exhibitions of printing machinery appliances and supplies at the Grand Central Palace in New York City; such exhibitions were held in April, 1913, and April, 1914 (fol. 315). The President of this company, Mr. Cockburn, testified that at the show held in 1913, an Honorary Advisory Committee including representatives of organized labor was formed and the names of the members of this committee printed on the letter heads and paper of the company for the purpose of advancing the exposition; that among the names appearing as Honorary Vice-President was the name of Jacob J. Kepple, Vice-President of the International Association of Machinists. He further testified that the idea was to secure the stamp of trade union approval (fol. 324). He further testified that prior to the exposition in April, 1913, he met the defendant, Deering; that the very first question Deering asked him was whether or not he was going to

employ union help and stated to him that if he was to employ union men that all of the men employed at the exposition would have to be union men (fol. 338); that Deering informed him that in his (Deering's) opinion if some union men were employed and non-union men brought in to work that the union men would discontinue working (fol. 339), and because of this information furnished by Deering that he (Cochrane) wrote to the exhibitors requesting them to employ union help and that the witness had in mind that union machinists would not work in the same building with non-union machinists (fol. 342); that at the exposition in 1913, the press of the appellant was actually erected by the members of the International Association under the order and instructions of the defendant Deering and Keppler, Vice-President of the International Association (fol. 343); that at the time of the exposition in April, 1914, the defendant, Deering, stated to the witness that the members of the International Association could not handle the product of the Duplex Company made under non-union conditions while a strike existed at Battle Creek, Michigan (fol. 344).

Italian Herald.

The appellant sold one of its presses to the Italian Herald and the defendants informed the Italian Herald of the labor differences between the appellant and the International Association. When the press arrived from Battle Creek, Michigan, the Britton Trucking Company was engaged by the appellant to haul the press to the plant of the Italian Herald. The Britton Trucking Company employed members of the International Association to haul the press. When the press reached the plant of the Italian Herald the union men withdrew their

services and another truckman who engaged non-union men was hired and the press was delivered to the Italian Herald (fol. 272). At that time construction work was in progress on the building occupied by the Italian Herald. The witness Squiers testified that he was informed by the superintendent of the building that Deering had stated that if non-union men were sent into the building to erect the press that the union men employed in the construction of the building would cease working and would refuse to work with the non-union men (fol. 297). Because of this fact the non-union men ceased to work. The press did not go into the building until after twelve o'clock, noon, on Saturday, when all of the union men had left the building and the press was erected Saturday afternoon and Sunday (fol. 283).

The witness further testified that the superintendent did not state how the defendant Deering was going to accomplish the withdrawal of the union men but that he knew he would have to persuade some officer of the union who was over the men employed and that the officer in turn would persuade the men and that it would be by argument and persuasion that the men would cease work (fol. 301); that one Harley Warner, who was in charge of the erection of the press for the appellant, was a non-union man and that at the time the factory at Battle Creek, Michigan, was not working under union conditions and that the strike existed (fol. 302); that the acts complained of by the appellant with respect to this press was that Deering stopped the men bedding cards of the International Association from working on the press and refused to permit them to work further (fol. 274, 297).

Nicoletti Press.

The appellant sold one of its printing presses to Nicoletti Brothers of New York City. The bill of lading for the press was sent to one Charles F. Young, an employee of the appellant, in November, 1913; that after he received the bill of lading he voluntarily went to the office of the District Lodge and saw Deering (fol. 203); that at that time he was a member of the International Association by reason of his membership in the District Lodge; having been reinstated in that Lodge in the year 1912 (fol. 203); that Deering informed him that a strike was in progress at the plant of the appellant at Battle Creek, Michigan, and asked the witness whether he was going to stand with the union of which he was a member or with the appellant (fol. 206). That Deering informed the witness that if he persisted in working after a strike had been called that in conformance with the union rules, his union card would be taken away from him (fol. 207). That he understood that his obligation as a member of the union was to obey the instructions of the officers of the District Lodge with respect to working and refraining from working when a strike existed (fol. 227). That the defendant Deering went with the witness from the office of the District Lodge to the Charles Britton Trucking Company and that no objection to his going was offered by the witness (fol. 230); that on the way the conversation continued friendly and when the witness handed the bill of lading to Mr. Britton, Mr. Deering requested Britton not to haul the machinery; "that was in the form of a request; Britton was not a member of the union" (fol. 230). That there was no dispute; that they all were still friendly (fol. 230). The witness Burkle testified, with respect to the installation of

this press, that all that the International Association did was to withdraw the services of its members (fol. 259); that the witness acted as a picket and as such attempted to induce the erector, Smith, to quit work, which he refused to do when the press was erected. "It was under Mr. Deering's instructions I attempted to persuade men to cease working and if they did, well and good, and if they did not, I could not help it" (fol. 260). "I never saw any man assaulted or never heard Mr. Deering issue any orders to have any man assaulted" (fol. 260).

The witness Burkle further testified that he was instructed to induce men working there to cease working and attempted to persuade them, by argument, to cease work and was not told to assault any one (fol. 255).

This witness further testified that a man named Soeller, who was doing picket duty with him at the plant, told him that he should stay away from the pressroom as far as possible because something was going to happen (fol. 255). The witness testified (fol. 255) that nothing happened after the time Soeller told him to stay away from the plant "and I do not know where Soeller got his idea from." This is all the testimony with respect to the Nicoletti Press.

Plainfield Press.

It is stated in connection with the appellant's press purchased by the Plainfield Press that it was intimated that it might have trouble with the union pressmen whom it employed, but there is no evidence that it ever did have any trouble with the union pressmen.

Bolletino Della Sera.

The same method was adopted in attempting to prevent a press sold to this paper from being delivered. Deering ordered the International Association men to stop work (fol. 208-233). The defendant Deering is said to have stated to Young that he would do everything he could to prevent that machinery from going into the paper office. But "doing everything he could" is shown to be nothing more than he would adopt the means already described. It also appears that Deering had notified members of the International Association employed in repair shops not to handle or repair appellant's presses.

Violence.

The appellant attempts to show that violence was threatened. The defendant Deering is said to have laughingly said to Young that he would "shoot him" (fol. 211). But this was not considered as a threat. Young further testified that Deering threatened to take away his union card if he did not cease to violate the laws of the District Lodge and obey the strike order as the constitution of the District Lodge required (fol. 227). In this respect the witness testified:

> "The Nicoletti press was installed in November, 1913, at which time I met Deering.
>
> "Q. At that time you had your union card and claimed membership in the International Association of Machinists? A. Yes.
>
> "Q. You say that you met Deering prior to the installation of that press? A. Yes.
>
> "Q. You knew that he was an officer of

District Council No. 15, did you not? A. Yes.

"Q. And that was the District Council of which you were a member? A. Yes.

"Q. He informed you that there was a strike called by the International Association against the Duplex Company, did he not? A. Yes.

"Q. And that as a member you were not to work on the machinery of the Duplex Company? A. Yes.

"Q. That was the information that he conveyed to you at the office, was it not? A. Yes. That was the substance of the information." (Fol. 233.)

The witness further testified:

"Q. And he told you not to work upon it (Duplex printing press) as a member of the International Association of Machinists? A. Yes.

"Q. He further told you that if you did he would see that your card was taken away in the union? A. Yes.

"Q. That was the threat that he made at that time, to take your card away from you? A. Yes.

"Q. As provided by the union rules? A. Yes.

There was some testimony by the witnesses Young and Maddox that they had met with an assault in the highways of the City of New York after leaving the plant of the Italian Herald. There was no evidence to connect the defendants or any members of the International Association of Machinists with this assault. This assault, al-

though in no way being connected with the defendant or the International Association, could not be set out to be part of the general scheme or conspiracy and the continuous effort, as disclosed upon the trial, of the defendants and the Interational Association was to obtain an eight-hour work day and a recognized minimum rate of wage by simply refusing to handle the product of the appellant and by taking the position that they would do all of the appellant's work or none of it.

The evidence discloses that the defendants and the International Association of Machinists in all their activities covering a period of more than five years had always resorted to peaceful methods and the testimony of the pickets discloses that their instructions were simply to induce workingmen, by argument and persuasion, to cease work. It certainly cannot be argued from one isolated case of assault that the defendants or the International Association can be charged with having either instigated the assault or having knowledge of it or that it was part of the general comprehensive plan to improve the condition of its members by the insistence of the eight hour day and the minimum rate of wage.

The only other embarrassment which the appellant has met with in installing and erecting its presses since the strike is that where there are members of other unions in entirely different trades employed on a building if it was attempted to install one of the appellant's presses by non-union labor the union men in the other trades were likely to cease work, not because of any conspiracy, but because under union laws, it is customary so to do.

If what the International Association has planned and executed is a conspiracy or is in any way unlawful then a labor organization has become as impotent in improving the condition of

workmen as was the individual workman prior to such organization. It is undisputed that the sole purpose of the defendants is to improve the condition of its members by securing them proper hours of work and proper remuneration. They have submitted their terms to the appellant and these terms have been rejected upon the ground as stated by Mr. Stone that the appellant refused to recognize the rights of the organization "to make any demands." This has been followed by the workmen peacefully ceasing their employment in the establishment of the appellant at Battle Creek, Michigan, and that men of their organization refusing to erect the appellant's presses. There has been no interference with interstate commerce. There has been no threat made to any of the appellant's customers. All that has been done is to bring to their attention the existence of the labor difficulties now existing between the appellant and the International Association. If these are not peaceful means and are not lawful means to be employed by a labor organization in effecting the proper purposes for which it is created, then it is perfectly obvious that there is no such thing as lawful conduct on the part of a labor organization as soon as it begins to be effective.

The appellant's entire claim of conspiracy rests not upon the unlawfulness of any act, but upon the effectiveness of the act of the International Association in withdrawing its men from erecting these presses and advising proposed customers of this fact as a means of making the appellant consent, for business reasons, to establish an eight-hour day and a minimum rate of wage. The question of conspiracy, however, depends not upon the effectiveness of the means employed but whether such means are lawful and proper.

In the *Tri-City Central Trades Council* v. *American Steel Foundries*, 238 Fed. 732, it was decided that even though picketing and persuasion might interfere with the complainant's conduct of its business and make it harder to retain old employees and to hire and keep new ones, it would not warrant the granting of an injunction.

The Court said:

> "Indeed, the very act of striking often seriously interferes with that 'free and unrestrained control and operation of the employer's business' which the plaintiff here alleges as an object of the conspiracy charged; but the lawfulness or unlawfulness of the strike is not to be tested by such incidental effect of it. And so it is with persuasion and picketing, properly carried on in the interest of a lawful strike. The laborer may be strictly within his rights, although he obstructs 'the free and unrestrained control and operation of the employer's business.' The right to strike must carry with it by implication the right to interfere with the employer's business to a certain extent. The right to persuade prospective employees by legitimate argument must of necessity interfere with the employer's business. Where labor is essential to the successful conduct of a business, any interference with that labor is an interference with the employer's business. But whether the interference with the business is lawful or unlawful, depends upon the facts in each case."

The appellant has apparently misconstrued the decision in the Danbury Hatters' case (*Loewe* v.

Lawlor, supra,) and the decision in the case of *Paine Lumber Company* v. *Neall, supra.*

In *Loewe* v. *Lawlor*, (*supra*), the gravamen of the charge against the defendants was that customers of the Lawlor concern were threatened with the ruination of their business if they dealt with that concern, and there was no contention on the part of the Hatters that there was any strike or industrial dispute existing between these customers and this organization.

In the case of *Paine Lumber Company* v. *Neall*, (*supra*), there was no strike or industrial dispute existing between the complainant and the Carpenters' Union.

In the case at bar there is entirely an absence of evidence of any threat, plan or purpose to injure any customer of the appellant and it is conceded that there was an industrial dispute existing between the International Association and the appellant. The union pressmen, who operated the presses of the appellant, were never requested to cease work on these presses, although the defendants would have been within their rights to make such a request, and there is not even a suggestion in the record that this was done. All the evidence discloses is that the members of the International Association refused to handle and erect the presses of the appellant and that in some instances they attempted to induce others to cease handling and erecting the presses and that they notified purchasers and proposed purchasers of the appellant's presses that a strike existed at Battle Creek, Michigan.

What the International Association desired to accomplish cannot be distorted. Their purpose and intent first appeared in the issue of their trade journals in the year 1909 and followed continuously with their purpose to obtain an eight-hour

day and a minimum rate of wage, as showing the conferences with the appellant up to the time of the strike.

The gist of litigation of this character is for the court to determine whether the efforts of the defendants are made in good faith to advance the interests of the organization or whether its sole purpose is to inflict punishment upon the appellant. The good faith of the International Association in attempting to establish these conditions for the betterment of its members is evidenced by the testimony of every witness presented by the appellant.

Being unsuccessful through means of mediation, conciliation or arbitration in obtaining the eight-hour workday with the recognized minimum scale of wage the organization used the only weapon left to it, to wit: A strike, to accomplish the lawful end. In taking the position that it would do all of the work for the appellant or none of it the International Association was within its rights where its purpose to advance the interests of its membership is so easily spelled out as in the case at bar and if by the use of lawful means as were used in this case, namely, the withdrawing of the services of the members of the International Association, resulted in incidental injury to the appellant, a court of equity will not intervene and the right of injunction will not lie.

POINT II.

Irreparable injury to property and property rights is neither alleged nor proven by the appellant.

There was no evidence adduced on the trial which disclosed that the activity of the defendants and the International Association resulted in the cancellation of any contract or order for the appellant's presses.

There was no evidence adduced which disclosed that any financial loss was caused the appellant by the activity of the defendants and the International Association except such as could reasonably be assumed from the existence of a strike at Battle Creek, Michigan, and the refusal of the members of the International Association to handle and erect the presses of the appellant.

The Sherman Anti Trust Law, in Section 20, specifically states that:

> "No restraining order or injunction shall be granted by any Court of the United States * * * unless necessary to prevent irreparable injury to property or to a property right and party making the application for which injury there is no adequate remedy at law; and such property or property rights must be described with particularity in the application * * *."

Notwithstanding the total absence of proof on the trial the Amended Bill of Complaint does not allege irreparable injury to property or property rights and on that question the following are the paragraphs of the Bill of Complaint purporting to allege these facts:

"16. That your orator has a property interest in the freedom of all persons or corportations who are or might become customers of your orator, to purchase their printing presses from such manufacturers as they see fit, without constraint, duress, coercion or any other influence incompatible with free competition, and that by reason of the aforesaid conspiracy and the acts in furtherance thereof to cause costly labor troubles to your orator's customers and to interfere with the carting, installation and use of your orator's presses it is inevitable that nearly all of your orator's customers should eventually transfer their patronage to competitors of your orator rather than undergo said labor troubles so inflicted upon said customers for the purpose of injuring your orator's business, unless your orator can obtain relief from this honorable court (fols. 46-47).

"17. That on account of the aforesaid combination and conspiracy and the acts performed in furtherance thereof your orator has already suffered great loss and damage in its good will, trade and business, and is suffering a continuing injury and has no adequate remedy at law, because much of its said damage is incapable of definite proof for recovery in law and because it would be necessary for your orator to bring a multiplicity of suits against the great number of persons engaged in said conspiracy, and because many of said defendants are insolvent and would be unable to respond in damages, and because it is impossible for your orator to ascertain the full extent to which its good will, trade and business has been

deterred from placing contracts and orders with your orator by reason of the general rumors inspired by the defendants for the purpose of frightening away any newspaper which might patronize your orator's presses (folio 47 48).

"18. Your orator has already lost many customers on account of the aforesaid conspiracy, and its trade is being injured and jeopardized each day that the said conspiracy continues, and it is necessary that your orator have immediate relief in the form of a preliminary injunction, and that also a restraining order should issue out of this honorable court until such time as the defendants are ready for a hearing on a preliminary injunction. That if said restraining order is not issued the defendants and those acting in conjunction with them will carry out their said threats against the said National Exposition Company unless and until said National Exposition Company shall unlawfully repudiate its said contract permitting your orator to exhibit its said machinery at said exhibition in said Grand Central Palace in the week commencing April 18th, 1914, before the large number of newspaper representatives and possible customers who will visit said exposition. That if said exposition company refuses to extend its said contract with your orator, then its said exhibition of printing presses will be hindered and prevented in such a way as to irreparable injure the prestige and business of said exposition company, and your orator will lose the money which it has already spent for said exposition and the opportunity of advertising its said ma-

> chines before the newspapers of the country, and the great notoriety attached to said disturbance will reflect upon your orator and its ability to carry out contracts without disturbances, and be a lasting injury to its trade and good will. That if said exhibition company does not cancel its said contract with your orator, then your orator will be irreparably injured by being deprived of its widely advertised opportunity to exhibit at said annual exposition before the newspapers of the country and to secure contracts or orders in that way, and will lose the amount of money it has already spent for said purpose, and will find its trade and good will irreparably injured by reason of the notoriety and prominence which will be given to said disturbance both by the defendants and members of the trade generally, including your orator's competitors; that it is, therefore, necessary for your orator to have an *ex parte* restraining order without delay, to prevent the carrying out of said conspiracy to injure and destroy the said exposition company unless it will repudiate its lawful contract with your orator." (Pgs. 19-23.)

It will be noted that in Section 16 of the Amended Bill of Complaint the appellant urges a very broad proposition, to wit:

> "That your orator has a property interest in the freedom of all persons or corporations who are or might become customers of your orator to purchase their printing presses from such manufacturers as they see fit without restraint, duress, coercion or any

other influence incompatible with fair competition * * * and to cause such labor trouble to your orator's customers and to interfere with the carrying, installation and using of your orator's presses * * *."

The evidence affirmatively discloses that the defendants and the International Association did nothing more than to state to purchasers of the appellant's presses that a strike existed at Battle Creek, Michigan, and that it refused to permit its members to handle these presses in loading them into vehicles or in loading them from vehicles and erecting them in the plants of the purchasers.

It is impossible for the appellant to successfully urge that the freedom of others to deal with any concern they choose can be abridged by injunction which would prevent such persons from ascertaining the true facts in connection with the commodity purchased or to be purchased. If the New York Law Journal desires to purchase a press from the appellant, clearly it is entitled to know whether the appellant can deliver and erect the press and an injunction such as prayed for in this action would prevent the proprietors of the New York Law Journal from being informed by the defendants that because of a strike between the International Association and the Appellant, members of the union would not handle and erect the appellant's press. The appellant claims that it has a property right in preventing the proprietor of the New York Law Journal from having the fact that a strike existed called to his attention. While it might and probably would enable the appellant to sell more presses it would obviously be contrary to all known rules of equitable jurisprudence and give, by injunction, rights to the appellant which affect primarily business interests of other employers and

of its own customers. Furthermore, to say that the members of the International Association, during a strike of its members in the appellant's factory at Battle Creek, Michigan, may not co-operate with the other members of the International Association and refuse to handle the product of the appellant is to abridge the freedom to contract, which is one of the most essential features of our constitutional guarantees. If the appellant could enjoin the machinists from refusing to handle these presses during its strike, it would be granting by such injunction rights contrary to the freedom of men to contract and by an injunction founded on an allegation of conspiracy, workmen would be forced to work for and be employed by an employer contrary to their desires and legal rights; and contrary to their constitutional guarantees.

The appellant is in the position to employ or not to employ such men as it chooses and no workman can appeal to a court of equity and compel the appellant to employ him, no matter how great his personal necessities may be or whether the refusal of the appellant to employ him may result in his not having the means to sustain himself or his family. The appellant has the right which no court can abridge—to employ whom it chooses. Likewise the workingmen have the right which no court can abridge—to choose whom they will work for and under what conditions they will work—and it is no more a conspiracy for the defendants to refuse to handle the appellant's presses during a strike of its members than it would be for the appellant to refuse to allow its men to handle its presses.

The property right which in paragraph 16 the appellant alleges it possesses is nothing more than the right to solicit business under fair competition. This right is similar to the right that the defend-

ants have to work for whom they choose and under what conditions they choose.

These rights are not property rights—they are personal rights—and the right which the defendants have to solicit whom they shall work for and under what conditions they shall work, and the right which the appellant has to absolute freedom from whom they shall solicit business and the right of every proposed purchaser to determine what manufacturer he will deal with are co-relative and stand on the same basis. It is obnoxious to the very spirit, not alone of the Constitution, but of fair dealing, to urge that where the defendants are exercising their freedom of determining under what conditions they will work for the appellant, and the appellant is exercising the same right in determining whom it shall employ and the terms of their employment, that a court of equity should interfere and by injunction deprive one of the parties of its freedom and make an exercise of that freedom punishable by the drastic methods of a restraining order.

The appellant's whole case, from the allegations of the complaint to its statements in its brief, all carry out he antediluvian position stated by Mr. Stone, the Chairman of the Board of Directors of the appellant, when he stated at (fol. 399): "I simply took the position they had no right to make any demand."

There is no property interest of the appellant threatened and no act done or threatened which in any way affects propert yrights.

At the conclusion of the trial of the case of *Paine Lumber Co.* v. *Neall* (*supra*), Mr. Justice Mayer, in writing the opinion denying the application of the complainant for an injunction at 212 Fed. Rep., pages 267, 268, says:

"Of the many cases cited I find none authoritative where a general business situation in the case of employers or a general trade situation in the case of employees was corrected by injunction at the instance of private suitors.

"Ample remedy is provided at common law or by statute for recovery of money damages in actions by private litigants. The courts have time and again extended the equity arm to prevent the commission or continuance of injury directed against particular persons and have protected employers against violence and sympathetic strikes; but where the purpose of an injunction is, as in the case at bar, to attempt to control a large body of men generally to work or not to work on a class of goods, or in a kind of manufacture (as distinguished from a specific instance or instances as above discussed) the remedy of injunction is not to be granted in a litigation between private parties."

In the case at bar the appellant assumes the attitude that it is the only one entitled to the freedom to contract guaranteed by the Constitution and urges that the defendants should be enjoined from the exercise of the same freedom. We are confident that this contention will not meet with the approval of this court.

POINT III.

There being no proof adduced upon the trial of irreparable injury to property and property rights, only the United States could apply for injunctive relief under the Sherman Act.

Paine Lumber Co. v. Neal, 244 U. S. 459.
Blindell v. Hogan, 54 Fed. Rep. 40.

Mannington v. Hocking Valley R. R. Co. 183 Fed. Rep. 140.

Southeastern Express Co. v. U. S. Express Co., 88 Fed. Rep. 650. Affd. 35. C. C. A. 172.

Metcalf v. American School Furniture Co., 108 Fed. Rep. 909.

National Fireproofing Co. v. Mason Builders Association, 26 L. R. A. (N. S.) 148.

United States v. Addington Pipe & Steel Co., 16 L. R. A. 122. 29 C. C. A. 141. 54 U. S. App. 723.

Minnesota v. Northern Securities Co., 194 U. S. 48.

The appellant urges that its right to apply for an injunction is predicated upon the Clayton amendment to the Sherman Anti-Trust Act, under the provisions referring to irreparable injury to property and property rights.

A careful reading of the record discloses that no evidence was adduced that the appellant had ever lost a sale through the activities of the defendants, nor was there ever an instance where a press was sold where it was not erected at the plant to which

it was consigned and that after erection there never was at any time any refusal upon the part of the pressmen or any other mechanic to operate the press in the plant of the customer of the appellant.

The only evidence adduced was that the appellant having refused to establish a minimum rate of wage at its plant at Battle Creek, Michigan, and having refused a minimum rate of wage in the manufacture of its presses at Battle Creek, Michigan, the members of the Machinists' Union refused to handle or erect the presses manufactured under the conditions as existed at Battle Creek, Michigan, and during the period when the members of the Machinists' Union were out on strike as against the Appellant at the point of manufacture.

Certainly whatever interpretation may be placed upon the Clayton Amendment to the Sherman Anti-Trust Law, it cannot be successfully argued that under its terms and by its provisions it intended to grant further rights and privileges to employers to enjoin the members of labor organizations. If the amendment had not been passed there could be no argument presented that the Appellant was entitled to an injunction.

Paine Lumber Co. v. Neal, 244 U. S. 459.

The Appellant cannot maintain this suit in order to declare the organization to which the respondent belongs unlawful under the Sherman Act.

National Fireproofing Co. v. Mason Builders Association, 26 L. R. A. (N. S.) 148.

To render an association or organization unlawful under the Act of July 21, 1890, it must appear that such combination was formed for the purpose of restraining trade or commerce among the sev-

eral states or foreign nations, or that such restraint unnecessarily resulted from such combination and thus deprived the public of the benefits which flow from free competition.

> *United States* v. *Trans Missouri Freight Assn.*, 166 U. S. 290.
>
> *Whitwell* v. *Continental Tobacco Co.*, 64 L. R. A. 689, 60 C. C. A. 290, 125 Fed. 454.
>
> *Gibbs* v. *McNeely*, 60 L. R. A. 152.
>
> *Riglow* v. *Calumet & S. S. Min. Co.*, 167 Fed. 709.
>
> *Bossert* v. *Dahl*, 221 N. Y. 342.

In *Paine Lumber Co.* v. *Neal*, 244 U. S. 459, at page 471, Mr. Justice Holmes, speaking for the Court, said:

> "We shall not believe that the ordinary action of a labor union can be made the ground of an injunction under those laws until we are so instructed by the New York Court of Appeals."

In *Bossert* v. *Dahl*, 221 N. Y. 342, a decision rendered almost immediately after the decision of this Honorable Court in the case of the *Paine Lumber Co.* v. *Neal* (*supra*), the Court said:

> "An association of individuals may determine if its members shall not work for specific employers of labor. The question, however, is as to its purpose in reaching such determination. If the determination is reached in good faith; for the purpose of bettering the condition of its members and

> not through malice or otherwise to injure an employer, the fact that such action may result in causing injury to the employer does not constitute justification for issuing an injunction against enforcing such action. * * *
>
> "Certainly the condition complained of has no tendency to produce a monopoly of manufacture of building since the more successful it is the more competitors are introduced into the trade.

The record discloses that the conditions requested of the appellant were the same as all others engaged in the same character of manufacture in the trade and that at the time of the commencement of this action, the conditions requested of the appellant were in force and in effect in similar plants manufacturing similar products throughout the United States of America. The concluding paragraph in the quotation above *re Bossert* v. *Duhl*, is applicable with full force and effect in the instant case.

The activities of the defendants would not have a tendency to interfere with competition but would in fact make the competition more free and permit manufacturers of printing presses to continue the manufacture and sale of these printing presses in free competition with each other as to the cost of manufacture.

POINT IV.

There was no interference with interstate commerce.

The Anti Trust Laws described commerce as follows:

> "Commerce," as used herein, means trade or commerce among the several States and with foreign nations or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands."

The appellant did not contend upon the trial that the International Association or the defendants interfered with or attempted to interfere with the shipment of presses from Battle Creek, Michigan; nor did the appellant contend or attempt to prove that the International Association or the defendants interfered with or attempted to interfere with the transportation of the appellant's presses en route to their places of consignment. Wherever testimony was offered as to the shipment of a press, it appeared without contradiction that the press was shipped without any interference by the defendants or the International Association and that it reached its place of consign-

ment without any effort being made to hinder or delay the press while en route. All complaints on the part of the appellant with respect to the delivery and erection of the presses consists of the refusal of the members of the International Association to transport and handle the product of the appellant after it had reached its point of consignment. This refusal caused embarrassment in some instances in a local way and the appellant alleges that because men employed by draymen refused to work that interstate commerce was interfered with. If this proposition is sound then teamsters and machinists' helpers employed by draymen could not legally combine or cease from working as in every instance no matter how local the situation was the contention would be raised that interstate commerce had been interfered with.

The evidence so clearly enunciates these facts and the proposition is so elementary that the defendants believe further argument is unnecessary and simply desire to present the opinion of the Supreme Court of the United States on the question. Primarily, however, the defendants urge that the fact that the appellant's profits may be less because the defendants have directed machinists who are members of the International Association not to handle and erect these presses does not constitute interference with interstate commerce.

In *United States* v. *Knight Company*, 156 U. S. 1, at page 12 Chief Justice FULLER says:

> "Doubtless the power to control a manufacturer of a given thing, involves in a certain sense the control of its disposition, but this is a secondary and not a primary sense, and although the exercise of that power may bring the operation of commerce into play,

it does not control it, and succeeded to manufacture and is not a part of it, but, however, the regulated commerce has the power to prescribe the rule by which commerce is to be governed."

In *Anderson v. United States*, 171 U. S., at page 615, Mr. Justice PECKHAM said:

"Where the subject matter of the agreement does not directly relate to or act upon and embrace Interstate Commerce, and where the undisputed facts fairly show that the purpose of the agreement was not to regulate commerce, but that it was entered into with the object of properly and fairly regulating the business in which the parties to the agreement were engaged, such agreement will be upheld and is not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object. As is said in *Smith v. Alabama*, 124 U. S. 465, 473: "There are many cases, however, where the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations." The same is true as to certain kinds of agreements entered into between persons engaged in the same business for the direct and bona fide purpose of properly and reasonably regulating the conduct of their business among them-

selves and with the public. If an agreement of that nature, while apt and proper for the purpose thus intended, should possibly, though only indirectly and unintentionally, affect interstate trade or commerce, in that event we think the agreement would be good. Otherwise, there is scarcely any agreement among men which has interstate or foreign commerce for its subject that may not remotely be said to, in some obscure way, affect that commerce and to be therefore void. We think, within the plain and obvious construction to be placed upon the act, and following the rules in this regard already laid down in the cases heretofore decided in this court, we must hold the agreement under consideration in this suit to be valid."

See also *Pettibone v. U. S.*, 148 U. S. 197.

POINT V.

Labor of a human being is not a commodity or article of commerce.

Section 6 of the Sherman Anti-Trust Law, as amended by the Clayton Act, reads as follows:

> "U. 323, Section 6: The labor of a human is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having cap-

> ital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

The appellant urges that an injunction should lie in this action and cites as precedents for its contention a line of decisions. (*National Service Co.* v. *U. S.*, 193 U. S. 197; *U. S.* v. *Patten*, 226 U. S. 525; *Standard Oil Co.* v. *U. S.*, 221 U. S. 1; *Duluth Board of Trade*, 121 U. S. 395; *Eastern State Retail Lumber Dealers' Association* v. *U. S.*, 234 U. S. 600; *Loewe* v. *Lawlor*, 208 U. S. 274), which with the exception of *Loewe* v. *Lawlor* have no relevancy to the case at bar. All of these decisions are predicated upon the premise of an illegal combination or conspiracy to control a commodity or article of commerce.

As previously stated, the defendants urge that the decision in the case of *Loewe* v. *Lawlor* (*supra*) was the controlling factor in the deliberations of Congress in amending Section 6 so as to exclude the labor of a human being from being a commodity or article of commerce.

Prior to the enactment of the anti-trust laws the Federal Courts were without jurisdiction to deal with monopolies, as such. It was the enactment of the anti-trust laws which gave the Federal Court the broad power to curb combinations affecting the economic conditions throughout the States. When the decision in *Loewe* v. *Lawlor*, 235 U. S. 522, (Danbury Hatters' case) was rendered, the Sherman Law had not been amended and the United States Supreme Court in arriving

at its conclusions treated the labor of human beings as a commodity or article of commerce. Since that decision was rendered Congress, with the approval of the President, has declared that the labor of a human being is not a commodity or article of commerce, and has declared

> "that nothing in the anti-trust laws shall be construed to effect the existence and operation of labor organizations."

Labor organizations, as such, have been excluded from the anti-trust law and the power of the United States Courts limited to granting restraining orders or injunctions against such organizations only when it shall appear that such restraining order or injunction is necessary to prevent irreparable injury to property or to a property right and clearly sets out that the party making the application, for which injury there is no adequate remedy at law, must describe the property and property right with particularity. There being no proof of irreparable injury to property or to a property right in this action; there being no proof that an adequate remedy at law does not exist for the appellant and there being no allegation in the bill of complaint that irreparable injury was caused to property or to a property right where no adequate remedy at law exists, the application for the injunction must be denied.

The section of the anti-trust law which specifically states that the labor of a human being is not a commodity or article of commerce renders the prior decisions impotent and necessitates a consideration of the activities of labor organizations from the viewpoint as laid down by Congress.

POINT VI.

Irrespective of the Clayton Act there were no facts adduced on the trial which would warrant the issuance of an injunction.

The decisions of the courts, both of the United States and of the State of New York, are unanimous on the proposition that workingmen have the right to cease work; that after a strike they have the right to peacefully picket and that they have the right to persuade others by peaceful means to cease employment, to cease to patronize and to persuade others by legal means to cease to patronize.

The question which the court has been called upon to determine in litigation of this character is the purpose and object of the association. If the defendants' motives and purposes were to improve the condition of the members of the union and to advance their general welfare, this court will not restrain them, even though incidental injury results to the appellant. The testimony of the witness Stone, the Chairman of the Board of Directors, of the appellant and its former President and General Manager, discloses conclusively that the purpose and motive of the International Association was to improve the general condition of its members engaged in this industry by shortening the hours of labor and advancing the wages of the men engaged in that particular industry. These facts are borne out from the following testimony of Mr. Stone:

> "Q. During all of the time from 1909 up to and including 1913, up to the time of the strike, Mr. Keppler in all of his conferences

with you was urging you to establish an eight-hour day at your plant, was he not? A. Yes, if you call it urging.

"Q. And he was urging you to pay as a minimum scale of wages to the men employed in your plant the union rate of wages, was he not? A. Yes.

"Q. He had told you at all of these conferences and subsequent to 1909 and between that date and 1913 that there was an effort being made by the International Association of Machinists to create an eight-hour day in this industry that you were engaged in? A. Yes.

"Q. And he told you that in this whole industry he was trying to create union conditions as to the payment of a minimum wage for the eight hours of labor, did he not? A. Yes.

"Q. And the effort of the International Union was not only to have you establish an eight-hour day and pays a minimum rate of wage to the men employed as machinists, but to have that done in all plants in the country where your industry was involved; you knew that, and had been told that? A. Yes.

"Q. So you, as far as this Union was concerned in their requests and demands upon you, they were similar to the demands made upon the Hoe Company, upon the Goss Company and upon the other printing press manufacturers in this country; that is a fact, is it not? A. I simply took the position that they had no right to make any demand.

"Q. I appreciate what your position was, but I am asking you a question; their de-

mands were similar? A. If you call it a demand; I do not recognize a demand of that sort.

"Q. But that is a fact that they were asking the same from others? A. Asking, yes.

"Q. That they were asking from you? A. Yes.

"Q. So that they did not select you from all the printing press manufacturers or men in this industry to ask these things of, did they? A. No." (Fols. 398 to 401.)

The witness Cochrane, testifying in behalf of the appellant with respect to a conversation he had with Deering and Neyland, prior to the exposition in 1914, testified:

"Q. You also testified that Mr. Neyland and Mr. Deering told you that the reason they were insistent that the strike at Battle Creek be settled before their men handled the machinery was that the Goss and the Hoe people would withdraw the conditions which had been granted to their men.

"A. Well, we understood it, that if the Duplex Company did not accede to the same conditions as Goss and Hoe, Goss and Hoe would then throw open their shops." (Fol. 353.)

This testimony discloses beyond all question of doubt that the purpose of the defendants and the International Association was not only to create general working conditions for the members of the International Association but also to retain those conditions in plants where they had been inaugurated. Furthermore, the appellant offered in evidence an extract from the Machinists' Monthly

Journal published under date of 1913, which contained the following utterance of Vice-President Kepper of the International Association:

> "It is not the desire of the interested associations to resort to strikes as the entire elimination of all conditions that would bring about the dissension is more conducive to the general welfare of all concerned as strikes and kindred procedure should not be necessary to secure the consent to working condiitons so patently fair and equitable. It is intended, however, that the eight-hour day should become effective in the printing and paper making machinery industry."

The right of a labor union to refuse to work on material manufactured by nonunion men and their right to notify others that they would refuse to work on such nonunion made product has been given careful consideration by the Court of Appeals of the State of New York. This proposition was last considered in the State of New York in the matter of *Bossert* v. *Duhl*, 221 N. Y. 342, and because of the fact that it is on "all fours" with the case at bar a large part of the opinion is submitted for the perusal of this Honorable Court:

> "The material part of the judgment appealed from is as follows: "It is adjudged that the defendants, their attorneys, agents, servants, associates and all persons acting in aid of or in connection with them and each of them, be and they hereby are perpetually enjoined and prohibited from conspiring, combining, or acting in concert in any manner to injure or interfere with the

plaintiff's good will, trade or business by any of the following means, to wit:

"By sending to any customer or prospective customer of plaintiffs, any letter, circular or communication printed, written or oral, which interms or by inference suggests that labor troubles will follow the use of materials purchased from plaintiffs or from any person, firm or corporation declared unfair, or whose material does not bear the union label, meaning the plaintiffs thereby; or

"By inducing, ordering, directing, requiring or compelling by any by-law, rule or regulation or any act thereunder any person whatever to refrain from or cease working for any person, firm or corporation because they use material purchased of or furnished by plaintiffs, or by any person, firm or corporation declared unfair, or whose material does not bear the union label, meaning the plaintiffs thereby.

"And the defendants are further enjoined from inducing any workmen in other trades to quit work on any building because non-union carpenters are there employed to install the plaintiffs' materials which union carpenters refuse to handle or install.

"Nothing herein contained is to be construed to prevent peaceable strikes except those directed against customers or prospective customers or plaintiffs for the purpose of injuring or interfering with plaintiffs' good will, trade or business. . . ."

In reversing the judgment and denying the right to an injunction the Court of Appeals said:

"And whenever the courts can see that a refusal of members of an organization to work with non-members may be in the interest of the several members, it will not assume, in the absence of a finding to the contrary, that the object of such refusal was solely to gratify malice and to inflict injury upon such non-members. . . . Those principles concede the right of an association to strike in order to benefit its members; and one method of benefiting them is to secure them employment, a method conceded to be within the right of an organization to employ."

Judge McLaughlin, now of this court, then in the Appellate Division, writing in the *National Protective Association* v. *Cumming* case in that court (53 App. Div. 227, 230), said: "The Enterprise Association refused to permit its members to work upon any job where the members of the plaintiff were employed, and informed the employer in each instance that unless the members of the plaintiff were discharged its members would strike or, in other words, abandon the job, which they did, or threatened to do, in the three instances specified in the complaint; that they neither used force nor did anything tending to a breach of the peace other than that included in its threat to order a strike or withdraw its members, as well as the members of the other associations allied with it, from the work on which they were engaged. . . . This is all that the Enterprise Association did. It was seeking to obtain employment for its own members, and wherever it found places filled by members of the plaintiff association it

procured their discharge in order that the employment might be given to members of the Enterprise Association, and in case that was not done, they either withdrew or threatened to withdraw from the work."

It is unnecessary in the case now under consideration to hold that in all cases and under all circumstances, whatever a man may do alone he may do in combination with others, but it was clearly established in the National Protective Association case that workingmen may organize for purposes deemed beneficial to themselves, and in that organized capacity may determine that their members shall not work with non-union members or upon specified work or kinds of work.

It was not illegal, therefore, for the defendants to refuse to allow members of the Brotherhood to work in the paintiff's mill with non-union men. The same reasoning results in holding that the Brotherhood may by voluntary act refuse to allow its members to work in the erection of materials furnished by a non-union shop. Such action has relation to work to be performed by its members and directly affects them. The voluntary adoption of a rule not to work upon non-union material and its enforcement differs only in degree from such voluntary rule and its enforcement in a particular case. Such a determination also differs entirely from a general boycott of a particular dealer or manufacturer with a malicious intent and purpose to destroy the good will or business of such dealer or manufacturer. An act when done maliciously and for an illegal purpose may be re-

strained and held to be within the bounds of reasonable business competition when done in good faith and for a legal purpose (see Ruling Case Law, vol. 16, pp. 431, 432 and 433). . . .

An association of individuals may determine that its members shall not work for specified employers of labor. The question ever is as to its purpose in reaching such determination. If the determination is reached in good faith for the purpose of bettering the condition of its members and not through malice or otherwise to injure an employer, the fact that such action may result in incidental injury to the employer does not constitute a justification for issuing an injunction against enforcing such action.

Workingmen cannot be compelled to work when by so doing their position as workingmen will be injured simply because if they do not continue their work a manufacturing employer will not be able to sell as large a quantity of material as he otherwise would and thus his good will, trade or business may be affected (see extended discussion in Harvard Law Review, vol. 20, pp. 253, 345, 429.) "The United States Supreme Court has recently had before it the case of *Paine Lumber Company* v. *Neal* (244 U. S., 459, 471,) which was an action to enjoin the United Brotherhood of Carpenters and Joiners of America from conspiring to have its members refuse to work upon material made by the plaintiffs in that action because not made by union labor, and also to enjoin them from enforcing by-laws intended to prevent its members from working upon what is called unfair material. The injunction was

denied. Justice Holmes, speaking for the court, in affirming the judgment appealed from and referring to the controversy, said: 'As this court is not the final authority concerning the laws of New York, we say but a word about them. We shall not believe that the ordinary action of a labor union can be made the ground of an injunction under those laws until we are so instructed by the New York Court of Appeals (*National Protective Ass'n of Steam Fitters and Helpers* v. *Cumming*, 170 N. Y., 315). Certainly the conduct complained of has no tendency to produce a monopoly of manufacture or building since the more successful it is the more competitors are introduced into the trade. Cases like *Kellogg* v. *Sowerby* (190 N. Y. 370,) concerning conspiracies between railroads and elevator companies to prevent competition, seem to us very clearly not to have been intended to overrue the authority that we cite, and not to have any bearing on the present point'."

The facts in the Paine Lume Company case were substantially the same as the facts in the case now before us, and we understand the Supreme Court of the United States to assert in substance and effect that an ordinary common-law action should not, even considered with the statutes now in force, be sustained in this state upon the facts shown in that case or in the case now before us. . . .

Upon all the findings before us the statement in the finding that there was a "combination to organize all the non-union mills of Brooklyn" simply means that the Brotherhood determined to carry out the provi-

sions of its constitution relating to non-union made material by insisting upon its enforcement and by imposing the penalties provided thereby in case of failure of any of its members to comply therewith. The further statement as to the "orders of the business agents" simply means that the representatives of the Brotherhood called the attention of union carpenters employed on buildings where non-union material was being erected to the consequences to them as members of the Brotherhood in case they continued such employment. . . .

We think that the rules laid down by this court in the National Protective Association case require a reversal of the judgment in favor of the plaintiff upon the findings before us. When it is determined that a labor organization can control the body of its members for the purpose of securing to them higher wages, shorter hours of labor and better relations with their employers, and as a part of such control may refuse to allow its members to work under conditions unfavorable to it, or with workingmen not in accord with the sentiments of the labor union, the right to refuse to allow them to install non-union-made material follows as a matter of course, subject to there being no malice, fraud, violence, coercion intimidation or defamation in carrying out their resolutions and orders.

Voluntary orders by a labor organization for the benefit of its members and the enforcement thereof within the organization is not coercion. The members of the organization, as we have already stated, who are not willing to obey the orders of the organi-

zation are at liberty to withdraw therefrom. The bounds beyond which an association of employees may not as a general rule go in controlling its members in their dealings with employers are not easily determined. They cannot at least extend beyond a point where its or their direct interests cease. There is a material difference in the power of an association so far as it affects its primary or secondary interest. Where the acts of an employee or employees in their individual or associate capacity are reasonably and directly calculated to advance lawful objects they should not be restained by injunction.

A strike or boycott may be legal or illegal according to the acts involved therein (*Gray* v. *Building Trades Council*, 91 Min., 171; *State* v. *Van Pelt*, *supra*; *Gin Mfg. Co.* v. *Doerr*, 214 Fed. Rep., 111; *Mills* v. *U. S. Printing Co.*, 99 A. D., 605 a'd 199 N. Y., 76; see also opinion of Andrews J., in *Seubert, Inc.*, v. *Reiff*, 98 Misc. Rep., 402), so an action for a direct and primary purpose in the interest of indivduals or a combination of individuals taken in good faith to advance the interest of the individuals or combination may be lawful, while a remote and secondary action which carries with it a degree of malice as a matter of law is illegal. In the case now before us if the defendants had called upon the public generally to discontinue using the plaintiff's material and had sought to prevent all persons by communications, written or otherwise from dealing with the plaintiff, their acts would have been illegal.

It does not appear from the record that

the defendants in any way interfered with the trade or business of the plaintiff except that the members of the Brotherhood were by their voluntary action required to decline using material made in non-union shops, and announcement was made of such intention that the same might be known by contractors in advance of the contracts to be entered into in connection with the erection of the work. Such action of the defendants did not extend beyond such refusal to install non-union made material, and so far as it amounted to either a strike or a boycott, it directly affected the Brotherhood and its members.

An examination of the many cases called to our attention by the plaintiff will show that in most instances the acts criticized and condemned were not directly connected with the purpose sought to be conserved by the defendants therein. A few of such cases are as follows: *Loewe* v. *Lawlor* (208 U. S., 274), *Bailey* v. *Master Plumbers Association* (— Tenn., —, s. c., 52 S. W. Rep., 273), *Rocky Mountain Bell Telephone Co.* v. *Montana Fed. of Labor* (156 Fed. Rep., 809), *Barnes* v. *Chic. Typ. Union* (232 Ill., 424), *Iron Moulders' Union* v. *Allis Chalmers Co.* (166 Fed. Rep., 45)."

A labor organization, as such, has never been construed as a conspiracy either at Common Law or under the Statutes.

Lindsay & Co. v. *Montana Federation of Labor*, 37 Montana 264.

Macauley v. *Tierney*, 19 R. I. 255.

Ames v. *Union R. R. Co.*, 62 Fed. 14.

National Protective Assn. v. *Cummings*, 170 N. Y. 315.

State v. *Stockford*, 77 Conn. 227.

In *Gill Engraving Co.* v. *Doerr*, 214 Fed. Rep., 111, the activity of a labor organization in New York City was made the subject of an action in the Federal Court. In that case the defendants generally addressed communications to customers of the complainant urging that the business of the customers be turned from the complainant to union shops. The activity of the defendants is clearly set forth in the opinion. In that case Mr. Justice Hough said:

> "I do not perceive any distinction upon which a legal difference of treatment should be based between a lockout, a strike and a boycott. They often look very unlike, but this litigation illustrates their basis identity. All are voluntarily abstentions from acts which normal persons usually perform for mutual benefit; in all the reason for said abstention is a determination to conquer and attain desire by proving their endurance of the attack will outlast the resistance of the defense; and for all the law of New York provides the same test, namely, to inquire into the legality (1) of the object in view, and (2) of the means of attainment."

The Circuit Court of Appeals, in the case of *National Fireproofing Company* v. *Masons Builders' Association, et. al.*, 169 Fed. Rep., 263, held that:

> "Laborers may combine for mutual advantage and so long as the motive is not malicious, the object not unlawful or oppressive, and the means neither deceitful nor fraudulent, the result is not a conspiracy, although it may necessarily work injury to others."

In *National Protective Association* v. *Cummings*, 170 N. Y., 324, the Court, by Chief Justice PARKER, at page 321, says:

> "Workingmen have the right to organize for the purpose of securing higher wages, shorter hours of labor or improving their relations with their employers. They have the right to strike; that is, to cease working in a body by pre-arrangement until a grievance is redressed, provided the object is not to gratify malice or inflict injury upon others, but to secure better terms of employment for themselves. A peaceable and orderly strike, not to harm others, but to improve their own conditions, is not in violation of law."

The purpose and objects of these defendants cannot in any way be questioned. Their purpose and object was to establish an eight-hour day and a minimum scale of wage in the industry in which the complainant was engaged and that fact had been announced to the complainant some four years prior to the strike at Battle Creek and after every effort had been made to obtain these conditions by arbitration and conciliation. As said by Mr. Justice HOUGH in *Gill Engraving Co.* v. *Doerr* (*supra*):

> "What motive incited defendants to injure Gill Company? None, except that it hinders the expansion and aggrandizement of the union, and therefore gives rise to the same kind of objection that the soldier has to the man who prevents his onward march. It can rarely be said that the soldier is moved by a desire to kill his opponent, but he will kill him if necessary."

Further on in his opinion, Mr. Justice HOUGH at page 121 says:

> "In the United States Courts for this circuit, *National Fireproofing Co.* v. *Mason Builders' Ass'n.*, 169 Fed., 259, 94 C. C. A., 535, 26 L. R. A. (N. S.), 148, is controlling. It accepts the New York cases fully, piously regrets the injuries committed, and writes the epitaph of litigation such as this by declaring that, when equal legal rights clash, equity is helpless. This is true; it would have been just as true to point out that the result of legalizing strikes, lockouts, any boycotts under any circumstances must be that those who understand the use of such legal tools can always keep within the law and accomplish their main purpose while inflicting all necessary 'incidental' injury."

The testimony of the General Manager of the appellant discloses beyond all question of doubt that the motive and purpose of the defendants and the International Association was to improve the condition of the men engaged in the trade by shortening the hours of labor and increasing the wage therefor. The history of litigation of this charac-

ter as recited discloses that where the motives of the defendants are to improve their own condition that a court of equity will not restrain them. With this litigation, to say the least, equitable rights conflict and an injunction must be denied.

POINT VII.

The record discloses, without contradiction, that the purpose of the organization of which the defendants are members was to establish throughout the trade the eight hour work-day and a minimum rate of wage.

The appellant's brief, from its inception, is predicated upon the theory that the defendants were engaged in a conspiracy to injure it and that its main and sole purpose is to destroy its business and good will. This statement is contradicted by the testimony of the President of the appellant, found at fos. 396 to 400 of the record.

> "Mr. Keppler and Mr. Edwards had continuously urged arbitration of the strike. We are working our men ten hours a day at Battle Creek at the present time, and we pay them from $2 to $10 a day, but we do not have any uniform minimum scale.
>
> "During all this time from 1909 to 1913, up to the time of the strike, Mr. Keppler was urging me to establish an eight-hour day and the union rate of wage as a minimum scale.
>
> "Q. He had told you at all of these conferences and subsequent to 1909 and be-

tween that date and 1913, that there was an effort being made by the International Association of Machinists to create an eight-hour day in this industry that you were engaged in. A. Yes.

"Q. And he told you that in this whole industry he was trying to create union conditions as to the payment of a minimum wage for the eight hours of labor, did he not? A. Yes.

"Q. Certain letters were sent you which were received by others, as far as you know? A. Yes.

"Q. And the effort of the International Union was not only to have you establish an eight-hour day and pay a minimum rate of wage to the men employed in the country where your industry was involved; you know that, and had been told that? A. Yes.

"Q. So you, as far as this union was concerned in their requests and demands upon you, they were similar to the demands made upon the Hoe Company, upon the Goss Company and upon the other printing press manufacturers in the country; that is a fact, is it not? A. I simply took the position that they had no right to make any demand.

"Q. I appreciate what your position was, but I am asking you a question; their demands were similar? A. If you call it a demand; I do not recognize a demand of that sort.

"Q. But that is the fact, that they were asking the same from others? A. Asking, yes.

"Q. So that they did not select you from all the printing press manufacturers or

men in this industry to ask these things of, did they? A. No.

"Q. Or attempt to enforce them? A. No. (Fols. 3961400.)

In the appellant's very exhaustive brief, the appellant cites a number of cases which are not applicable to the case at bar. It relies primarily upon the decision in the *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229; *Dr. Miles Medical Co.* v. *J. D. Park & Sons*, 220 U. S. 373; *United States* v. *Rintelen*, 233 Fed. 793, 799; *Auburn Draying Co.* v. *Wardell*, 227 N. Y. 1.

In *Hitchman Coal & Coke Co.* v. *Mitchell*, it was decided by this Honorable Court that the question involved was the attempted persuasion to break a contract of employment.

No evidence is adduced in this case of any attempt to breach a contract. The evidence disclosed that an effort was made to have a customer use his good offices to settle the controversy between the appellant and the International Association of Machinists.

In the *United States* v. *Rintelen*, the Court obviously understood the purpose of the conspiracy was not to have it call strikes for the purpose of improving the condition of the workmen, Rintelen not being a member of any labor union, but that its purpose was to prevent the manufacture of such material as might be used against the German Empire in the late world's war.

The appellant in its logic starts from a false premise, assuming an improper motive which was absolutely contradicted by all of the evidence and from this false premise builds its arguments.

The cases relied upon by the appellant are only those where it has been found from the evidence that a conspiracy in violation of law existed.

All that the defendants in this action did was to refuse to work for the appellant. The principle was enunciated that "we will do all of your work or none of it" and the efforts of the appellant in this action is to obtain a decree of this Court to the effect that the appellant may employ non-union men ten hours per day at wages ranging from $2 to $10 per day to manufacture its machines in Battle Creek, Michigan, and that union men throughout he country in those cities to which the presses are consigned must erect them without complaint.

The decree requested is not to be a decree of injunction or prohibition but is a mandatory decree which has for its effect the direction of the Court to compel members of the union of which the defendants are members, to perform work upon a non-union made product manufactured under conditions which they deem to be unfair and to work upon those products without complaint and against their will, wishes and desires.

This character of injunction, if granted, would be a novel one in the history of this country and would deprive the members of the defendant union of its constitutional right to work for those whom they please.

POINT VIII.

It is respectfully submitted that the judgment be affirmed.

FRANK X. SULLIVAN,
Attorney for Appellees,
46 Cedar Street,
New York City.

FRANK X. SULLIVAN, of New York City.

FRANK L. MULHOLLAND, of Toledo, Ohio.
On the Brief.

DUPLEX PRINTING PRESS COMPANY *v.* DEERING ET AL., INDIVIDUALLY AND AS BUSINESS AGENTS OF DISTRICT NO. 15 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 45. Argued January 22, 1920.—Decided January 3, 1921.

1. The Act of October 15, 1914, known as the Clayton Act, in so far as it grants relief by injunction to private suitors, or affixes conditions and otherwise modifies the Sherman Act, is applicable to a suit for an injunction pending at the time of its enactment. P. 464.
2. For the purpose of compelling a manufacturer of printing presses to unionize its factory in Michigan, in which there had been an unsuccessful strike, and to enforce there the "closed shop," the eight-hour day and the union scale of wages, organizations of machinists with headquarters at New York City, and a larger organization of national scope with which they were affiliated, entered into a combination to interfere with and restrain the manufacturer's interstate trade by means of a "secondary" boycott, centered particularly at New York City and vicinity where many of the presses were marketed; in pursuance of which this manufacturer's customers in and near New York were warned, with threats of loss and of sympathetic strikes in other trades, not to purchase or install its presses; a trucking company usually employed by customers

was notified, with threats, not to haul them; employees of the trucking company and of customers were incited to strike in order to prevent both hauling and installation; repair shops were notified not to repair them; union men were coerced by threats of the loss of their union cards and of being blacklisted as "scabs" if they assisted in installing them; an exposition company was threatened with a strike, if it allowed them to be exhibited, etc., etc.,—all of which seriously interfered with the interstate trade of the manufacturer and caused great loss to its business. *Held*, a combination and conspiracy to restrain interstate commerce against which the manufacturer was entitled to relief by injunction under the Sherman Act, as amended by the Clayton Act. Pp. 461 *et seq.*

3. A conspiracy is a combination of two or more by concerted action to accomplish an unlawful purpose or to accomplish a purpose not in itself unlawful by unlawful means. If the purpose be unlawful, it may not be carried out by means otherwise lawful; and although it be lawful, it may not be carried out by means that are unlawful. P. 465.
4. A "secondary boycott" is a combination not merely to refrain from dealing with the person aimed at, or to advise or by peaceful means persuade his customers to refrain, but to exercise coercive pressure upon such customers, actual or prospective, in order to cause them to withhold or withdraw patronage through fear of loss or damage to themselves. P. 466.
5. In determining the right to an injunction under the Clayton and Sherman Acts, the legality or illegality of a boycott under the common law or under the statutes of a particular State is of minor consequence, since the acts of Congress are paramount in their field and must be given full, independent effect. P. 466.
6. It is settled by decisions of this court that a restraint of interstate commerce produced by peaceable persuasion violates the Sherman Act, and is not justified by the fact that the participants in the combination or conspiracy have an object beneficial to themselves or their associates which they might have been at liberty to pursue in the absence of the statute. P. 468.
7. Section 6 of the Clayton Act, in declaring that nothing in the anti-trust laws shall be construed to forbid the existence and operation of labor organizations or to forbid their members from lawfully carrying out the legitimate objects thereof, and that such organizations or their members shall not be construed to be illegal combinations or conspiracies in restraint of trade, assumes that the normal objects of such organizations are legitimate, but contains nothing

to exempt them or their members from accountability when they depart from objects that are normal and legitimate and engage in an actual combination or conspiracy in restraint of trade. It does not authorize any activity otherwise unlawful, or enable a normally lawful organization to cloak such an illegal combination or conspiracy. P. 468.

8. The first paragraph of § 20 of the Clayton Act—which provides that injunctions shall not be granted in any case between an employer and employees, etc., growing out of a dispute concerning the terms and conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and that such property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney,—is merely declaratory of the law as it stood before. P. 469.

9. The second paragraph of § 20 of the Clayton Act, which provides that "no such . . . injunction shall prohibit" certain specified acts, manifestly refers to injunctions in any case of the character mentioned in the paragraph preceding, namely, "a case between an employer and employees . . . involving, or growing out of, a dispute concerning terms or conditions of employment;" and the concluding words of the second paragraph, "nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States," are to be read in the light of the context, and mean only that those acts are not to be so held when committed by parties concerned in a "dispute concerning terms or conditions of employment." P. 469.

10. As the section imposes an exceptional and extraordinary restriction upon the equity powers of the federal courts, and upon the general operation of the anti-trust laws, conferring a special privilege or immunity upon a particular class to the detriment of the general public, the rules of statutory construction forbid that the privilege be enlarged by resorting to a loose construction or by ignoring or slighting the qualifying words of the section. P. 471.

11. This section confines the exceptional privilege to those who are proximately and substantially concerned in an actual dispute respecting the terms or conditions of their own employment, past, present or prospective; it does not use the words "employers and employees" in a general class sense, or treat all the members of a labor organization as parties to a dispute which proximately affects but a few of them. Pp. 471 *et seq.*

12. That the Clayton Act was not intended to legalize the secondary boycott is shown by its legislative history. P. 474.

13. In construing an act of Congress, debates expressing views and motives of individual members may not be resorted to, but reports of committees and explanatory statements in the nature of a supplemental report made by the committee member in charge of the bill in course of passage, may. *Id.*

252 Fed. Rep. 722, reversed.

THE case is stated in the opinion.

Mr. Walter Gordon Merritt and *Mr. Daniel Davenport* for appellant:

This is not an ordinary labor case in which the defendants have sought to improve their conditions of employment by a strike and incidental picketing against their employer, to which the ordinary rules relative to labor unions are applicable. Such a case involves manufacturing and production, which are the peculiar concern of labor unions.

The attack here is upon complainant's trade and commerce, *United States* v. *Knight Co.*, 156 U. S. 1; *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 220 U. S. 373; and there is not, nor has there been, any strike or discontent among the complainant's employees, except the ordered quitting work on August 27, 1913, of eleven out of 200 in the factory at Battle Creek and three road men erecting presses in different parts of the country. The complainant's productive organization is intact, and there is a harmonious copartnership between it and its employees, producing goods which are being attacked by union men in the interest of union factories and their employees. If complainant's employees were dissatisfied and had withdrawn from their employment with the complainant, and there was nothing else in the case, it would be a strike case, but since outsiders are trying to attack the trade and commerce being carried on through a harmoni-

ous partnership of labor and capital it is a boycott case. When employer and employees are working happily together to such an extent that the workmen refuse all inducements to strike, any further interference with their rights, whether it be by violence, intimidation or a boycott of the fruits of their toil, is illegal. If strikers or labor union representatives cannot persuade men to quit work, their rights are exhausted and they cannot resort to additional and more drastic methods. A strike is a fight between labor and capital, where labor withdraws from its copartnership with capital, and such a withdrawal because of dissatisfaction with the terms of the partnership is lawful. But a boycott necessarily implies that the goods are being produced by an existing organization of labor and capital, so that any attack on the goods and the sale of those goods is an attack upon both labor and capital, by union men working in the interest of union employers—and sometimes at their instigation—to prevent the sale of the open-shop products and secure a monopoly for the union-made products; it is the open-shop employer and his employees on the one side and the union employer and union employees on the other side, and the legality of the combination is not to be tested by the rules applicable to a labor-capital fight where labor merely withdraws from its partnership with capital, but is to be tested by the anti-trust laws which define the lawful methods of competition in the sale and distribution of products.

One of the purposes of the anti-trust laws is to give the public the benefit of free competition, so that all products surviving the battle of fair competition may flow naturally into the public markets of the nation for the selection of consumers. Any artificial or unreasonable obstruction to trade which deprives the public of these advantages necessarily violates the anti-trust laws.

To unduly restrict competition or obstruct the course

of trade is injurious to the public because it deprives the public of its inherent right of enjoying the service and the fruits of the service of everybody, and because if the obstruction is successful it keeps goods from the market and restricts the public's right of choice in determining what articles it may purchase. Any combination which, by artificial means, seeks to obstruct the course of trade, is illegal, and only that obstruction is tolerated which is incidental to the ordinary and regular pursuit of a business. The combination in the case at bar and the injury which it has inflicted and threatens to inflict upon the complainant was not incidental to the pursuit of any legitimate business, but had for its sole and direct purpose the suppression of the complainant's competition by erecting an artificial barrier between complainant and its customers and destroying its interstate trade.

The object of the defendants is to prevent the sale and use of machines unless they come from factories operated and exclusively manned by members of the combination and in accordance with methods approved by it. According to the defendants' contentions, and the contentions of the union factories which have conceded their demands, they must protect the union factories from the competition of the open-shop factories, because, under the natural laws of trade and competition, the union factories cannot survive with their increased cost of production. Not being able to control the complainant's producing organization at Battle Creek because the employees are contented with their employment, the only possible method by which this could be accomplished is to restrain the trade and commerce of the complainant by making their products unsalable. This is done by calling strikes against their installation, preventing common carriers from hauling them, threatening purchasers with strikes of pressmen, and with the impossibility of operating the presses, causing breakdowns of such presses, preventing

their repair, and finally even seeking to suppress their public exhibition and advertisement. If this can be done the barrier between the complainant and the public market will be unsurmountable.

There is no relation between the complainant's factories in Battle Creek and the places where the presses are to be exhibited, hauled, installed or operated, except commerce, so that the only way in which the conditions in the factories can be affected by the conduct of the men at the place of consignment is by controlling commerce.

The combination violates the Federal Anti-Trust Law and the complainant is entitled to an injunction under the Act of October 15, 1914.

The right to work or quit work is no more absolute than any other constitutional right and ceases to be a right when exercised for the purpose of injuring another or accomplishing a result contrary to public policy or restraining trade contrary to law. *Aikens* v. *Wisconsin*, 195 U. S. 204; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418; *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229; *Paine Lumber Co.* v. *Neal*, 244 U. S. 459; *Loewe* v. *Lawlor*, 208 U. S. 274; 235 U. S. 522; *Montague* v. *Lowry*, 193 U. S. 38; *Eastern States Retail Lumber Dealers' Association* v. *United States*, 234 U. S. 600; *United States* v. *Patten*, 226 U. S. 525; *Standard Oil Co.* v. *United States*, 221 U. S. 1; *State* v. *Duluth Board of Trade*, 107 Minnesota, 506.

A private party is entitled to an injunction against acts in violation of the Federal Anti-Trust Law. Clayton Act, § 16.

There is nothing in §§ 6 and 20 of the Clayton Act which legalizes conspiracies or forbids the issuance of injunctions in cases like this.

There is nothing in the act which indicates any intention to "draw the teeth" of the Anti-Trust Law, and everything points to a determination for more stringent

enforcement through supplementary legislation. The presence of § 6, as shown by the history of the legislation, is due to the fact that it was thought desirable to put at rest the contentions of some that the mere existence of labor unions for legitimate purposes was forbidden by the Sherman Anti-Trust Law.

Section 20 has no application to the case. It is obvious that none of the defendants is or has been or probably ever will be an employee of the complainant, whose factories are situated a thousand miles away from the State where the defendants reside. The limitation with which this section commences therefore excludes its application to the case at bar.

As a general proposition even workmen on strike are not "employees." *Atchison, Topeka & Santa Fe Ry. Co.* v. *Gee*, 139 Fed. Rep. 582; *Knud[illegible]n* v. *Benn*, 123 Fed. Rep. 636; *Union Pacific R. R. Co.* v *Ruef*, 120 Fed. Rep. 102; *Iron Molders' Union* v. *Allis-Chalmers Co*, 166 Fed. Rep. 45 (Judge Grosscup's opinion).

It would seem that the word "employee" implies the existence of a continuing employment relation. *Louisville &c. R. R. Co.* v. *Wilson*, 138 U. S. 501. The various acts specified in § 20, as acts not to be enjoined, have some reasonable significance when considered as the acts of employees carried on incidentally with the calling of a strike, but are not acts which can be lawfully and properly carried on by outsiders. The defendants' contention and the decision of the Circuit Court of Appeals lead to the conclusion that a "dispute concerning conditions of employment" between the complainant and any one of its employees justifies all of the other so-called employees in the United States, including the 3,000,000 members of the American Federation of Labor, engaging in a conspiracy to prevent the sale of articles made by 99.9 per cent. of the contented employees of the complainant. If, as in this case, the union can create a necessary dispute

to legalize its attack by ordering 5 per cent of the workmen to quit, it may likewise open the flood gates of destruction against the joint products of the employer and his 99 per cent. contented employees by merely showing that 1 per cent. has responded to its orders. And it is, of course, obvious that § 20 refers to a dispute between the employers and employees and does not extend any immunity to outsiders or sympathizers. Certainly the word "employer" or "employee" or "dispute" should not be extended beyond its natural meaning when to do so will make it operate in derogation of common rights of the particular class of litigants specified.

The intent of § 20 was to forbid the issuance of injunctions in those cases, only, where the acts enumerated in its several clauses would not be "unlawful in the absence of such dispute," referring, of course, to a "dispute concerning terms or conditions of employment" between the several classes of persons enumerated in the first sentence of the section. Acts which were unlawful before the passage of the Clayton Act are still unlawful under it, because they are unlawful independently of and in the absence of a trade dispute.

In other words, in trade dispute cases the presence of a trade dispute shall not itself taint the specified acts with illegality if they are otherwise legal. Since the secondary boycott is still unlawful in the absence of a trade dispute, *Eastern States Retail Lumber Dealers' Association* v. *United States*, 234 U. S. 600, it must likewise be unlawful when connected with a trade dispute. This whole section of the law, as shown by its history, was only intended to put at rest the contentions of labor, fallacious though they were, that the courts discriminated unfairly against lawful acts in trade dispute cases. The secondary boycott therefore remains as unlawful as ever.

It is further obvious that the various acts mentioned

in § 20 against which injunctions shall not issue in this limited class of cases are most of them acts which in and of themselves are ordinarily lawful as between an employer and his employees, and that this section accomplishes no other purpose than to declare the previously existing law on this subject. It merely declares that the acts specified of themselves and by themselves shall not be held to violate any federal law, but it does not mean that jurisprudence shall be revolutionized by declaring that such acts may be done with impunity to accomplish criminal purposes. If, as stated by this court, not even the recognition of a right by the Constitution can justify its exercise in furtherance of a criminal plot (*Aikens* v. *Wisconsin*, 195 U. S. 194), and the constitutional privilege of free speech cannot be used as a defense to an injunction which restrains speech or writing, in furtherance of an illegal conspiracy (*Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 439), then it certainly follows that the recognition of a right by a statute such as the Clayton Act will not justify the exercise of that right in furtherance of a criminal conspiracy, which is expressly recognized by the same statute. When these acts are used in furtherance of a criminal plot they become acts of an entirely different character from those described by this section, for they are colored, and their character determined, by the illegal plot.

Defendants' contention, besides requiring a repeal by implication, renders § 20 unconstitutional as class legislation, especially as it would exempt laborers, not as such but in their attempts to control sale and distribution of commodities. *Cleland* v. *Anderson*, 66 Nebraska, 252; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540.

From these well-reasoned decisions it would seem to follow that an exemption from the anti-trust laws extended to any class of people, purely as a class, is unconstitutional, if the exemption extends to that class

under the identical circumstances where other classes are bound by the law.

A statute forbidding the federal courts to issue any restraining order or injunction to prohibit the doing of enumerated acts, however unlawful they may be, and however necessary such order or injunction may be to preserve the subject-matter of the litigation, would conflict with the statutes creating those courts and with the general law giving them equitable jurisdiction over such cases when the matter involved exceeds $5,000 in amount.

Such a law would violate not only the due process clause of the Constitution, but that other clause which declares that the judicial power of federal courts of equity shall extend to all cases and controversies over which, by the statutes of their creation, they are given jurisdiction.

The right to injunction under the Clayton Act is established by *Paine Lumber Co.* v. *Neal*, 244 U. S. 459; and *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229. The act applies to a suit pending. *Pennsylvania* v. *Wheeling Bridge Co.*, 18 How. 421, 431; *Montgomery* v. *Pacific Ry. Co.*, 258 Fed. Rep. 382. And our construction of the act is sustained by *United States* v. *Rintelen*, 233 Fed. Rep. 793, 799; *Lamar* v. *United States*, 260 Fed. Rep. 561; *Alaska S. S. Co.* v. *International Longshoremen's Assn*, 236 Fed. Rep. 964; *Tri-City Central Trades Council* v. *American Steel Foundries*, 238 Fed. Rep. 728; *United States* v. *King*, 250 Fed. Rep. 908; 229 Fed. Rep. 275; *Stephens* v. *Ohio State Telephone Co.*, 240 Fed. Rep. 759; *Dowd* v. *United Mine Workers*, 235 Fed. Rep. 1; *United Mine Workers* v. *Coronado Co.*, 258 Fed. Rep. 829; and it is confirmed by its legislative history.

The combination is unlawful at common law. [Citing numerous decisions, including: *Shine* v. *Fox Bros. Mfg. Co.*, 156 Fed. Rep. 357; *Auburn Draying Co.* v. *Wardell*, 227 N. Y. 1; *Irving* v. *Joint District Council*, 180 Fed.

Rep. 896; *Huttig Sash & Door Co.* v. *Fuelle*, 143 Fed. Rep. 363; *Purvis* v. *United Brotherhood*, 214 Pa. St. 348; *Purington* v. *Hinchliff*, 219 Illinois, 159; *Lohse Patent Door Co.* v. *Fuelle*, 215 Missouri, 421; *Moores* v. *Bricklayers* (Ohio), 23 Law Bull. 665; *Thomas* v. *Cincinnati &c. Ry. Co.*, 62 Fed. Rep. 818; *Toledo, A. A. & N. M. Ry. Co.* v. *Pennsylvania Co.*, 54 Fed. Rep. 730; *Thomson Machine Co.* v. *Brown*, 89 N. J. Eq. 326; *Employing Printers Club* v. *Blosser Co.*, 122 Georgia, 509; *Seubert* v. *Reiff*, 98 Misc. 402; 164 N. Y. S. 522; *Schlang* v. *Ladies' Waist Makers' Union*, 124 N. Y. S. 289; 67 Misc. 221; *Burnham* v. *Dowd*, 217 Massachusetts, 351; *Loewe* v. *Lawlor*, 208 U. S. 274, 288; *Martell* v. *White*, 185 Massachusetts, 255].

The question of the applicability of the common law is for the independent decision of the federal courts, not controlled by the decisions of the New York courts. *Baltimore & Ohio R. R. Co.* v. *Baugh*, 149 U. S. 368; *Burgess* v. *Seligman*, 107 U. S. 33; *Smith* v. *Alabama*, 124 U. S. 465; *Rocky Mountain Telephone Co.* v. *Montana Federation of Labor*, 156 Fed. Rep. 809; *Loewe* v. *California State Federation of Labor*, 139 Fed. Rep. 71.

Mr. Frank X. Sullivan, with whom *Mr. Frank L. Mulholland* was on the brief, for appellees:

The means employed by the defendants to secure an eight-hour day and minimum rate of wage throughout the trade are authorized by the Clayton Amendment. Prior to this amendment the factor of "economic sympathies" referred to in *Gill Engraving Co.* v. *Doerr*, 214 Fed. Rep. 111, 120, note, placed the legality of the acts of labor unions in such doubt that it was not possible safely to direct the action of a combination of working men during a period of industrial dispute. Now this amendment clearly states what may be done; and whether it amplifies or merely clarifies what was the law, is im-

material. When the amendment was before Congress, it was recognized that the purpose was to change or clarify the law as laid down by the Supreme Court in the *Danbury Hatters' Case*, *Loewe* v. *Lawlor*, 208 U. S. 274; 235 U. S. 522; *Eastern States Retail Lumber Dealers' Association* v. *United States*, 234 U. S. 600; 51 Cong. Rec., p. 15945. It affirmatively appears that it was the decision in the *Danbury Hatters' Case* that brought the amendment about, and the great publicity of that case created the sentiment in its favor. There had been earlier attempts in Congress to exempt organizations of farmers and laborers from the Anti-Trust Law. *Loewe* v. *Lawlor*, 208 U. S. at p. 301; *Lawlor* v. *Loewe*, 209 Fed. Rep. 721, 726.

The collection of the judgment in the *Danbury Hatters' Case* (235 U. S. 522), by sale on execution of the workingmen's homes, could not be shifted from the shoulders of those directly bearing the burden to the public at large. It was a calamity for them, and the purpose of the Clayton Amendment was in part to prevent the recurrence of just such a catastrophe.

The effort of labor organizations to secure an equalization of the hours of labor and rate of wages throughout a trade is not only lawful but extremely beneficial both to employers and employees, and in accomplishing this purpose they are regarded with favor and approval by the courts of the community. *Wilson* v. *New*, 243 U. S. 332; *Paine Lumber Co.* v. *Neal*, 244 U. S. 459, 471; *Bossert* v. *Dhuy*, 221 N. Y. 342. It is perfectly clear that the object sought by the defendants was legitimate and laudable, and as such affords no ground for charging them with a conspiracy. Distinguishing: *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229; *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 220 U. S. 373; *United States* v. *Rintelen*, 233 Fed. Rep. 793, 799; *Auburn Draying Co.* v. *Wardell*, 227 N. Y. 1. This case falls directly within § 20 of the

Clayton Act, and is not analogous to the *Paine Lumber Company Case*, because here there was a strike or dispute over wages and hours between employer and employee.

The position of defendants has been that they will do all of appellant's work or none of it; that they refuse to handle and erect appellant's presses unless they can manufacture them. The appellant's contention is that it desires to employ men ten hours a day without any basic minimum wage, and to employ members of the International Association when it desires them to erect its presses when sent out from Battle Creek; and the application in this action is primarily to compel the members of the Association to erect the presses of appellant constructed under the conditions above referred to.

The action of the members of the Association in "terminating" their relation of employment with appellant is expressly authorized by the Clayton Amendment, and was lawful prior thereto. *National Protective Association* v. *Cumming*, 170 N. Y. 315, 324; *Paine Lumber Co.* v. *Neal*, *supra*. The Clayton Act prohibits injunctions restraining members of labor organizations "from ceasing to perform any work or labor," or from "recommending, advising or persuading others by peaceful and lawful means so to do." *Paine Lumber Co.* v. *Neal*, *supra*; *Bossert* v. *Dhuy*, *supra*. All that was done by anyone in behalf of the Association or by or at the direction of the defendants was recommending, advising or persuading others not to work in handling or installing the presses of appellant.

It is undisputed that the sole purpose of the defendants and the Association is to improve the condition of its members by securing them proper hours of work and proper remuneration. Submitted to appellant, their terms have been rejected upon the ground that appellant refuses to recognize the rights of the organization "to make any demands." This has been followed by the

workmen peacefully ceasing their employment in the establishment of appellant, and in men of their organization refusing to erect appellant's presses. There has been no interference with interstate commerce. There has been no threat made to any of appellant's customers. All that has been done is to bring to their attention the existence of the labor difficulties now existing between appellant and the Association. If these are not peaceful and lawful means to be employed by a labor organization in effecting the proper purposes for which it is created, then it is obvious that there is no such thing as lawful conduct on the part of a labor organization as soon as it begins to be effective.

The appellant's entire claim of conspiracy rests not upon the unlawfulness of any act, but upon the effectiveness of the acts of the Association. The question of conspiracy, however, depends not upon the effectiveness of the means employed, but whether such means are lawful and proper. *Tri-City Central Trades Council* v. *American Steel Foundries*, 238 Fed. Rep. 728, 732.

Irreparable injury to property and property rights is neither alleged nor proven. The defendants and the Association did nothing more than tell purchasers that a strike existed at Battle Creek, and that it refused to permit its members to handle these presses in loading them into vehicles or in loading them from vehicles and erecting them in the plants of the purchasers.

It is impossible for appellant to successfully urge that the freedom of others to deal with any concern they choose can be abridged by injunction which would prevent such persons from ascertaining the true facts in connection with the commodity purchased or to be purchased. While it probably would enable appellant to sell more presses, if it could prevent these facts from becoming known, it would obviously be contrary to all known rules of equitable jurisprudence to give, by injunc-

tion, rights to appellant which affect primarily business interests of other employers and of its own customers. Again, if appellant could enjoin the machinists from refusing to handle these presses during the strike, such injunction would grant rights contrary to the freedom of men to contract, and workmen would thereby be forced to work for and be employed by an employer contrary to their desires and contrary to their legal and constitutional rights. The appellant has the right which no court can abridge—to employ whom it chooses. Likewise, the workingmen have the right to choose whom they will work for and under what conditions. And it is no more a conspiracy for the Association to refuse to handle appellant's presses during a strike of its members than it would be for appellant to refuse to allow its men to handle appellant's presses.

The property right which appellant alleges it possesses is nothing more than the right to solicit business under fair competition. This right is similar to the right that the defendants have—to work for whom they choose and under what conditions they choose. These rights are not property rights; they are personal rights, and stand on the same basis. There is no property interest of appellant threatened and no act done or threatened which in any way affects property rights. *Paine Lumber Co.* v. *Neal*, 212 Fed. Rep. 259, 267, 268.

There being no proof adduced upon the trial of irreparable injury to property and property rights, only the United States could apply for injunctive relief under the Sherman Act. *Paine Lumber Co.* v. *Neal*, 244 U. S. 459.

It cannot be successfully argued that the Clayton Act intended to grant further rights and privileges to employers to enjoin the members of labor organizations.

Appellant cannot maintain this suit in order to declare the organization to which the appellees belong unlawful under the Sherman Act. *National Fireproofing Co.* v.

Mason Builders' Association, 169 Fed. Rep. 259. To render an association or organization so unlawful, it must have been formed for the purpose of restraining trade or commerce among the several States or foreign nations, or such restraint must necessarily result from such combination. *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290; *Whitwell* v. *Continental Tobacco Co.*, 125 Fed. Rep. 454; *Gibbs* v. *McNeeley*, 118 Fed. Rep. 120; *Bigelow* v. *Calumet & Hecla Mining Co.*, 167 Fed. Rep. 704, 709; *Paine Lumber Co.* v. *Neal*, 244 U. S. 459, 471; *Bossert* v. *Dhuy*, 221 N. Y. 342. The activities of the defendants would not have a tendency to interfere with competition but would in fact make the competition more free.

There was no interference with interstate commerce. All complaints of appellant with respect to the delivery and erection of presses relate to the refusal of members of the Association to transport and handle them after they had reached the point of consignment. This refusal caused embarrassment in some instances in a local way, and appellant alleges that, because men employed by draymen refused to work, interstate commerce was interfered with. If this proposition be sound, then teamsters and machinists' helpers employed by draymen could not legally combine or cease from working, as in every instance, no matter how local the situation was, the contention would be raised that interstate commerce had been interfered with.

The fact that appellant's profits may be less because the defendants have directed the machinists not to handle and erect these presses, does not constitute interference with interstate commerce. *United States* v. *Knight Co.*, 156 U. S. 1, 12; *Anderson* v. *United States*, 171 U. S. 604, 615; *Pettibone* v. *United States*, 148 U. S. 197.

Labor of a human being is not a commodity or article of commerce. Clayton Act, § 6.

Irrespective of the Clayton Act, there were no facts adduced on the trial which would warrant the issuance of an injunction. *Bossert* v. *Dhuy*, *supra*; *Lindsay & Co.* v. *Montana Federation of Labor*, 37 Montana, 264; *Macauley Brothers* v. *Tierney*, 19 R. I. 255; *Ames* v. *Union Pacific Ry. Co.*, 62 Fed. Rep. 7, 14; *National Protective Association* v. *Cumming*, *supra*; *State* v. *Stockford*, 77 Connecticut, 227; *Gill Engraving Co.* v. *Doerr*, *supra*; *National Fireproofing Co.* v. *Mason Builders' Association*, *supra*.

Mr. Justice Pitney delivered the opinion of the court.

This was a suit in equity brought by appellant in the District Court for the Southern District of New York for an injunction to restrain a course of conduct carried on by defendants in that District and vicinity in maintaining a boycott against the products of complainant's factory, in furtherance of a conspiracy to injure and destroy its good will, trade, and business—especially to obstruct and destroy its interstate trade. There was also a prayer for damages, but this has not been pressed and calls for no further mention. Complainant is a Michigan corporation and manufactures printing presses at a factory in Battle Creek, in that State, employing about 200 machinists in the factory in addition to 50 office-employees, traveling salesmen, and expert machinists or road men who supervise the erection of the presses for complainant's customers at their various places of business. The defendants who were brought into court and answered the bill are Emil J. Deering and William Bramley, sued individually and as business agents and representatives of District No. 15 of the International Association of Machinists, and Michael T. Neyland, sued individually and as business agent and representative of Local Lodge No. 328 of the same association. The Dis-

trict Council and the Lodge are unincorporated associations having headquarters in New York City, with numerous members resident in that city and vicinity. There were averments and proof to show that it was impracticable to bring all the members before the court and that the named defendants properly represented them; and those named were called upon to defend for all, pursuant to Equity Rule 38 (226 U. S. 659). Other jurisdictional averments need no particular mention. The District Court, on final hearing, dismissed the bill, 247 Fed. Rep. 192; the Circuit Court of Appeals affirmed its decree, 252 Fed. Rep. 722; and the present appeal was taken.

The jurisdiction of the federal court was invoked both by reason of diverse citizenship and on the ground that defendants were engaged in a conspiracy to restrain complainant's interstate trade and commerce in printing presses, contrary to the Sherman Anti-Trust Act of July 2, 1890, c. 647, 26 Stat. 209. The suit was begun before but brought to hearing after the passage of the Clayton Act of October 15, 1914, c. 323, 38 Stat. 730. Both parties invoked the provisions of the latter act, and both courts treated them as applicable. Complainant relied also upon the common law; but we shall deal first with the effect of the acts of Congress.

The facts of the case and the nature of the relief prayed are sufficiently set forth in the report of the decision of the Circuit Court of Appeals, 252 Fed. Rep. 722. The case was heard before Circuit Judges Rogers and Hough and District Judge Learned Hand. Judge Rogers, although in the minority, stated the case and the pleadings for the court (pp. 723–727) and delivered an opinion for reversal in which he correctly outlined (pp. 734–737) the facts as shown by the undisputed evidence—defendants having introduced none. Judges Hough and Hand followed with separate opinions for affirmance, not, however, disagreeing with Judge Rogers as to the facts. These may

be summarized as follows. Complainant conducts its business on the "open shop" policy, without discrimination against either union or non-union men. The individual defendants and the local organizations of which they are the representatives are affiliated with the International Association of Machinists, an unincorporated association having a membership of more than 60,000; and are united in a combination, to which the International Association also is a party, having the object of compelling complainant to unionize its factory and enforce the "closed shop," the eight-hour day, and the union scale of wages, by means of interfering with and restraining its interstate trade in the products of the factory. Complainant's principal manufacture is newspaper presses of large size and complicated mechanism, varying in weight from 10,000 to 100,000 pounds, and requiring a considerable force of labor and a considerable expenditure of time—a week or more—to handle, haul and erect them at the point of delivery. These presses are sold throughout the United States and in foreign countries; and, as they are especially designed for the production of daily papers, there is a large market for them in and about the City of New York. They are delivered there in the ordinary course of interstate commerce, the handling, hauling and installation work at destination being done by employees of the purchaser under the supervision of a specially skilled machinist supplied by complainant. The acts complained of and sought to be restrained have nothing to do with the conduct or management of the factory in Michigan, but solely with the installation and operation of the presses by complainant's customers. None of the defendants is or ever was an employee of complainant, and complainant at no time has had relations with either of the organizations that they represent. In August, 1913 (eight months before the filing of the bill), the International Association called a strike at complain-

ant's factory in Battle Creek, as a result of which union machinists to the number of about eleven in the factory and three who supervised the erection of presses in the field left complainant's employ. But the defection of so small a number did not materially interfere with the operation of the factory, and sales and shipments in interstate commerce continued. The acts complained of made up the details of an elaborate programme adopted and carried out by defendants and their organizations in and about the City of New York as part of a country-wide programme adopted by the International Association, for the purpose of enforcing a boycott of complainant's product. The acts embraced the following, with others: warning customers that it would be better for them not to purchase, or having purchased not to install, presses made by complainant, and threatening them with loss should they do so; threatening customers with sympathetic strikes in other trades; notifying a trucking company usually employed by customers to haul the presses not to do so, and threatening it with trouble if it should; inciting employees of the trucking company, and other men employed by customers of complainant, to strike against their respective employers in order to interfere with the hauling and installation of presses, and thus bring pressure to bear upon the customers; notifying repair shops not to do repair work on Duplex presses; coercing union men by threatening them with loss of union cards and with being blacklisted as "scabs" if they assisted in installing the presses; threatening an exposition company with a strike if it permitted complainant's presses to be exhibited; and resorting to a variety of other modes of preventing the sale of presses of complainant's manufacture in or about New York City, and delivery of them in interstate commerce, such as injuring and threatening to injure complainant's customers and prospective customers, and persons concerned

in hauling, handling, or installing the presses. In some cases the threats were undisguised, in other cases polite in form but none the less sinister in purpose and effect. All the judges of the Circuit Court of Appeals concurred in the view that defendants' conduct consisted essentially of efforts to render it impossible for complainant to carry on any commerce in printing presses between Michigan and New York; and that defendants had agreed to do and were endeavoring to accomplish the very thing pronounced unlawful by this court in *Loewe* v. *Lawlor*, 208 U. S. 274; 235 U. S. 522. The judges also agreed that the interference with interstate commerce was such as ought to be enjoined, unless the Clayton Act of October 15, 1914, forbade such injunction.

That act was passed after the beginning of the suit but more than two years before it was brought to hearing. We are clear that the courts below were right in giving effect to it; the real question being, whether they gave it the proper effect. In so far as the act (a) provided for relief by injunction to private suitors, (b) imposed conditions upon granting such relief under particular circumstances, and (c) otherwise modified the Sherman Act, it was effective from the time of its passage, and applicable to pending suits for injunction. Obviously, this form of relief operates only *in futuro*, and the right to it must be determined as of the time of the hearing. *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 18 How. 421, 431–432. See, also, *United States* v. *The Schooner Peggy*, 1 Cranch, 103, 110; *Sampeyreac* v. *United States*, 7 Pet. 222, 239–240; *Mills* v. *Green*, 159 U. S. 651, 653; *Dinsmore* v. *Southern Express Co.*, 183 U. S. 115, 120; *Berry* v. *Davis*, 242 U. S. 468, 470.

The Clayton Act, in § 1, includes the Sherman Act in a definition of "anti-trust laws," and, in § 16 (38 Stat. 737), gives to private parties a right to relief by injunction in any court of the United States against threatened loss or

damage by a violation of the anti-trust laws, under the conditions and principles regulating the granting of such relief by courts of equity. Evidently this provision was intended to supplement the Sherman Act, under which some of the federal courts had held, as this court afterwards held in *Paine Lumber Co.* v. *Neal*, 244 U. S. 459, 471, that a private party could not maintain a suit for injunction.

That complainant's business of manufacturing printing presses and disposing of them in commerce is a property right, entitled to protection against unlawful injury or interference; that unrestrained access to the channels of interstate commerce is necessary for the successful conduct of the business; that a widespread combination exists, to which defendants and the associations represented by them are parties, to hinder and obstruct complainant's interstate trade and commerce by the means that have been indicated; and that as a result of it complainant has sustained substantial damage to its interstate trade, and is threatened with further and irreparable loss and damage in the future; is proved by clear and undisputed evidence. Hence the right to an injunction is clear if the threatened loss is due to a violation of the Sherman Act as amended by the Clayton Act.

Looking first to the former act, the thing declared illegal by its first section (26 Stat. 209) is "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." The accepted definition of a conspiracy is, a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. *Pettibone* v. *United States*, 148 U. S. 197, 203. If the purpose be unlawful it may not be carried out even by means that otherwise would be legal; and although

the purpose be lawful it may not be carried out by criminal or unlawful means.

The substance of the matters here complained of is an interference with complainant's interstate trade, intended to have coercive effect upon complainant, and produced by what is commonly known as a "secondary boycott," that is, a combination not merely to refrain from dealing with complainant, or to advise or by peaceful means persuade complainant's customers to refrain ("primary boycott"), but to exercise coercive pressure upon such customers, actual or prospective, in order to cause them to withhold or withdraw patronage from complainant through fear of loss or damage to themselves should they deal with it.

As we shall see, the recognized distinction between a primary and a secondary boycott is material to be considered upon the question of the proper construction of the Clayton Act. But, in determining the right to an injunction under that and the Sherman Act, it is of minor consequence whether either kind of boycott is lawful or unlawful at common law or under the statutes of particular States. Those acts, passed in the exercise of the power of Congress to regulate commerce among the States, are of paramount authority, and their prohibitions must be given full effect irrespective of whether the things prohibited are lawful or unlawful at common law or under local statutes.

In *Loewe* v. *Lawlor*, 208 U. S. 274, where there was an effort to compel plaintiffs to unionize their factory by preventing them from manufacturing articles intended for transportation beyond the State, and also by preventing vendees from reselling articles purchased from plaintiffs and negotiating with plaintiffs for further purchases, by means of a boycott of plaintiffs' products and of dealers who handled them, this court held that there was a conspiracy in restraint of trade actionable under § 7 of the

Sherman Act, and in that connection said (p. 293): "The act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, or restricts, in that regard, the liberty of a trader to engage in business. The combination charged falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes." And when the case came before the court a second time, 235 U. S. 522, 534, it was held that the use of the primary and secondary boycott and the circulation of a list of "unfair dealers," intended to influence customers of plaintiffs and thus subdue the latter to the demands of the defendants, and having the effect of interfering with plaintiffs' interstate trade, was actionable.

In *Eastern States Retail Lumber Dealers' Association* v. *United States*, 234 U. S. 600, wholesale dealers were subjected to coercion merely through the circulation among retailers, who were members of the association, of information in the form of a kind of "black list," intended to influence the retailers to refrain from dealing with the listed wholesalers, and it was held that this constituted a violation of the Sherman Act. Referring to this decision, the court said, in *Lawlor* v. *Loewe*, 235 U. S. 522, 534: "That case establishes that, irrespective of compulsion or even agreement to observe its intimation, the circulation of a list of 'unfair dealers,' manifestly intended to put the ban upon those whose names appear therein, among an important body of possible customers combined with a view to joint action and in anticipation of such reports, is within the prohibitions of the Sherman Act if it is intended to restrain and restrains commerce among the States."

It is settled by these decisions that such a restraint produced by peaceable persuasion is as much within the

prohibition as one accomplished by force or threats of force; and it is not to be justified by the fact that the participants in the combination or conspiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute.

Upon the question whether the provisions of the Clayton Act forbade the grant of an injunction under the circumstances of the present case, the Circuit Court of Appeals was divided; the majority holding that under § 20, "perhaps in conjunction with section 6," there could be no injunction. These sections are set forth in the margin.[1] Defendants seek to derive from them some

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[1] "Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

"Sec. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining

authority for their conduct. As to § 6, it seems to us its principal importance in this discussion is for what it does *not* authorize, and for the limit it sets to the immunity conferred. The section assumes the normal objects of a labor organization to be legitimate, and declares that nothing in the anti-trust laws shall be construed to forbid the existence and operation of such organizations or to forbid their members from *lawfully* carrying out their *legitimate* objects; and that such an organization shall not be held in itself—merely because of its existence and operation—to be an illegal combination or conspiracy in restraint of trade. But there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the anti-trust laws.

The principal reliance is upon § 20. This regulates the granting of restraining orders and injunctions by the courts of the United States in a designated class of cases, with respect to (a) the terms and conditions of the relief and the practice to be pursued, and (b) the character of

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or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronise or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

acts that are to be exempted from the restraint; and in the concluding words it declares (c) that none of the acts specified shall be held to be violations of any law of the United States. All its provisions are subject to a general qualification respecting the nature of the controversy and the parties affected. It is to be a "case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment."

The first paragraph merely puts into statutory form familiar restrictions upon the granting of injunctions already established and of general application in the equity practice of the courts of the United States. It is but declaratory of the law as it stood before. The second paragraph declares that "no *such* restraining order or injunction" shall prohibit certain conduct specified—manifestly still referring to a "case between an employer and employees, . . . involving, or growing out of, a dispute concerning terms or conditions of employment," as designated in the first paragraph. It is very clear that the restriction upon the use of the injunction is in favor only of those concerned as parties to such a dispute as is described. The words defining the permitted conduct include particular qualifications consistent with the general one respecting the nature of the case and dispute intended; and the concluding words, "nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States," are to be read in the light of the context, and mean only that those acts are not to be so held when committed by parties concerned in "a dispute concerning terms or conditions of employment." If the qualifying words are to have any effect, they must operate to confine the restriction upon the granting of injunctions, and also the relaxation

of the provisions of the anti-trust and other laws of the United States, to parties standing in proximate relation to a controversy such as is particularly described.

The majority of the Circuit Court of Appeals appear to have entertained the view that the words "employers and employees," as used in § 20, should be treated as referring to "the business class or clan to which the parties litigant respectively belong"; and that, as there had been a dispute at complainant's factory in Michigan concerning the conditions of employment there—a dispute created, it is said, if it did not exist before, by the act of the Machinists' Union in calling a strike at the factory—§ 20 operated to permit members of the Machinists' Union elsewhere—some 60,000 in number—although standing in no relation of employment under complainant, past, present, or prospective, to make that dispute their own and proceed to instigate sympathetic strikes, picketing, and boycotting against employers wholly unconnected with complainant's factory and having relations with complainant only in the way of purchasing its product in the ordinary course of interstate commerce—and this where there was no dispute between such employers and their employees respecting terms or conditions of employment.

We deem this construction altogether inadmissible. Section 20 must be given full effect according to its terms as an expression of the purpose of Congress; but it must be borne in mind that the section imposes an exceptional and extraordinary restriction upon the equity powers of the courts of the United States and upon the general operation of the anti-trust laws, a restriction in the nature of a special privilege or immunity to a particular class, with corresponding detriment to the general public; and it would violate rules of statutory construction having general application and far-reaching importance to enlarge that special privilege by resorting to a loose construction of

the section, not to speak of ignoring or slighting the qualifying words that are found in it. Full and fair effect will be given to every word if the exceptional privilege be confined—as the natural meaning of the words confines it—to those who are proximately and substantially concerned as parties to an actual dispute respecting the terms or conditions of their own employment, past, present, or prospective. The extensive construction adopted by the majority of the court below virtually ignores the effect of the qualifying words. Congress had in mind particular industrial controversies, not a general class war. "Terms or conditions of employment" are the only grounds of dispute recognized as adequate to bring into play the exemptions; and it would do violence to the guarded language employed were the exemption extended beyond the parties affected in a proximate and substantial, not merely a sentimental or sympathetic, sense by the cause of dispute.

Nor can § 20 be regarded as bringing in all members of a labor organization as parties to a "dispute concerning terms or conditions of employment" which proximately affects only a few of them, with the result of conferring upon any and all members,—no matter how many thousands there may be, nor how remote from the actual conflict—those exemptions which Congress in terms conferred only upon parties to the dispute. That would enlarge by construction the provisions of § 20, which contain no mention of labor organizations, so as to produce an inconsistency with § 6, which deals specifically with the subject and must be deemed to express the measure and limit of the immunity intended by Congress to be incident to mere membership in such an organization. At the same time it would virtually repeal by implication the prohibition of the Sherman Act, so far as labor organizations are concerned, notwithstanding repeals by implication are not favored; and in effect, as

was noted in *Loewe* v. *Lawlor*, 208 U. S. 274, 303–304, would confer upon voluntary associations of individuals formed within the States a control over commerce among the States that is denied to the governments of the States themselves.

The qualifying effect of the words descriptive of the nature of the dispute and the parties concerned is further borne out by the phrases defining the conduct that is not to be subjected to injunction or treated as a violation of the laws of the United States, that is to say: (a) "terminating any relation of employment, . . . or persuading others by peaceful and lawful means so to do"; (b) "attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working;" (c) "ceasing to patronize or to employ any party to such dispute, or . . . recommending, advising, or persuading others by peaceful and lawful means so to do"; (d) "paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits . . ."; (e) "doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto." The emphasis placed on the words "lawful" and "lawfully," "peaceful" and "peacefully," and the references to the dispute and the parties to it, strongly rebut a legislative intent to confer a general immunity for conduct violative of the anti-trust laws, or otherwise unlawful. The subject of the boycott is dealt with specifically in the "ceasing to patronize" provision, and by the clear force of the language employed the exemption is limited to pressure exerted upon a "party to such dispute" by means of "peaceful and *lawful*" influence upon neutrals. There is nothing here to justify defendants or the organizations they represent in using either threats or persuasion to bring about strikes or a cessation of work

on the part of employees of complainant's customers or prospective customers, or of the trucking company employed by the customers, with the object of compelling such customers to withdraw or refrain from commercial relations with complainant, and of thereby constraining complainant to yield the matter in dispute. To instigate a sympathetic strike in aid of a secondary boycott cannot be deemed "peaceful and lawful" persuasion. In essence it is a threat to inflict damage upon the immediate employer, between whom and his employees no dispute exists, in order to bring him against his will into a concerted plan to inflict damage upon another employer who is in dispute with his employees.

The majority of the Circuit Court of Appeals, very properly treating the case as involving a secondary boycott, based the decision upon the view that it was the purpose of § 20 to legalize the secondary boycott "at least in so far as it rests on, or consists of, refusing to work for any one who deals with the principal offender." Characterizing the section as "blindly drawn," and conceding that the meaning attributed to it was broad, the court referred to the legislative history of the enactment as a warrant for the construction adopted. Let us consider this.

By repeated decisions of this court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body. *Aldridge* v. *Williams*, 3 How. 9, 24; *United States* v. *Union Pacific R. R. Co.*, 91 U. S. 72, 79; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 318. But reports of committees of House or Senate stand upon a more solid footing, and may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of a statute is obscure. *Binns* v. *United States*,

194 U. S. 486, 495. And this has been extended to include explanatory statements in the nature of a supplemental report made by the committee member in charge of a bill in course of passage. *Binns* v. *United States*, *supra*; *Pennsylvania R. R. Co.* v. *International Coal Co.*, 230 U. S. 184, 198–199; *United States* v. *Coca Cola Co.*, 241 U. S. 265, 281; *United States* v. *St. Paul, Minneapolis & Manitoba Ry. Co.*, 247 U. S. 310, 318.

In the case of the Clayton Act, the printed committee reports are not explicit with respect to the meaning of the "ceasing to patronize" clause of what is now § 20. (See House Rept. No. 627, 63d Cong., 2nd sess., pp. 33–36; Senate Rept. No. 698, 63d Cong., 2nd sess., pp. 29–31; the latter being a reproduction of the former.) But they contain extracts from judicial opinions and a then recent text-book sustaining the "primary boycott," and expressing an adverse view as to the secondary or coercive boycott; and, on the whole, are far from manifesting a purpose to relax the prohibition against restraints of trade in favor of the secondary boycott.

Moreover, the report was supplemented in this regard by the spokesman of the House committee (Mr. Webb) who had the bill in charge when it was under consideration by the House. The question whether the bill legalized the secondary boycott having been raised, it was emphatically and unequivocally answered by him in the negative.[1] The subject—he declared in substance or

[1] Extracts from Congressional Record, vol. 51, Part 10, 63d Cong., 2d sess.

(Page 9652.)

MR. VOLSTEAD. Would not this also legalize the secondary boycott? . . .

MR. WEBB. Mr. Chairman, I do not think it legalizes a secondary boycott.

MR. VOLSTEAD. Let me read the lines, if the gentleman will permit. And no such restraining order or injunction shall prohibit anyone—

"from ceasing to patronize *those* who [*or to*] employ any party to

effect—was under consideration when the bill was framed, and the section as reported was carefully prepared with the settled purpose of excluding the secondary boycott and confining boycotting to the parties to the dispute, allowing parties to cease to patronize and to ask others to cease

such dispute, or from recommending, advising, or persuading others by peaceful means so to do."

Now, does not the word "others" in that instance refer to others than parties to the dispute?

MR. WEBB. No; because it says in line 15:

"From ceasing to patronize or employ any parties to such dispute."

MR. VOLSTEAD. . . . Can there be any doubt this is intended or does, in fact, legalize the secondary boycott?

MR. WEBB. I will say frankly to my friend when this section was drawn it was drawn with the careful purpose not to legalize the secondary boycott, and we do not think it does. There may be a difference of opinion about it, but it is the opinion of the committee that it does not legalize the secondary boycott and is not intended to do so. It does legalize the primary boycott; it does legalize the strike; it does legalize persuading others to strike, to quit work, and the other acts mentioned in section 18 [now section 20], but we did not intend, I will say frankly, to legalize the secondary boycott.

(Page 9653.)

MR. WEBB. I will say this section was drawn two years or more ago and was drawn carefully, and those who drew this section drew it with the idea of excluding the secondary boycott. It passed the House, I think, by about 243 to 16, and the question of the secondary boycott was not raised then, because we understood so clearly it did not refer to or authorize the secondary boycott.

(Page 9656.)

MR. WEBB. Mr. Chairman, I should vote for the amendment offered by the gentlemen from Minnesota [Mr. Volstead] if I were not perfectly satisfied that it is taken care of in this section. The language the gentlemen reads does not authorize the secondary boycott, and he could not torture it into any such meaning. While it does authorize persons to cease to patronize the party to the dispute and to recommend to others to cease to patronize that same party to the dispute, that is not a secondary boycott, and you can not possibly make it mean a secondary boycott. Therefore this section does not authorize the secondary boycott.

I say again—and I speak for, I believe, practically every member

to patronize a party to the dispute; it was the opinion of the committee that it did not legalize the secondary boycott, it was not their purpose to authorize such a boycott, not a member of the committee would vote to do so; clarifying amendment was unnecessary; the section as reported expressed the real purpose so well that it could not be tortured into a meaning authorizing the secondary boycott. This was the final word of the House committee on the subject, and was uttered under such circumstances and with such impressive emphasis that it is not going too far to say that except for this exposition of the meaning of the section it would not have been enacted in the form in which it was reported. In substantially that form it became law; and since in our opinion its proper construction is entirely in accord with its purpose as thus declared, little need be added.

The extreme and harmful consequences of the construction adopted in the court below are not to be ignored. The present case furnishes an apt and convincing example. An ordinary controversy in a manufacturing establishment, said to concern the terms or conditions of employment there, has been held a sufficient occasion for imposing a general embargo upon the products of the establishment and a nation-wide blockade of the channels of interstate commerce against them, carried out by inciting sympathetic strikes and a secondary boycott against complainant's customers, to the great and incalculable damage of many innocent people far remote from any connection with or control over the original and actual dispute—people constituting, indeed, the general public

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of the Judiciary Committee—that if this section did legalize the secondary boycott there would not be a man vote for it. It is not the purpose of the committee to authorize it, and I do not think any person in the House wants to do it. We confine the boycotting to the parties to the dispute, allowing parties to cease to patronize that party and to ask others to cease to patronize the party to the dispute.

upon whom the cost must ultimately fall, and whose vital interest in unobstructed commerce constituted the prime and paramount concern of Congress in enacting the anti-trust laws, of which the section under consideration forms after all a part.

Reaching the conclusion, as we do, that complainant has a clear right to an injunction under the Sherman Act as amended by the Clayton Act, it becomes unnecessary to consider whether a like result would follow under the common law or local statutes; there being no suggestion that relief thereunder could be broader than that to which complainant is entitled under the acts of Congress.

There should be an injunction against defendants and the associations represented by them, and all members of those associations, restraining them, according to the prayer of the bill, from interfering or attempting to interfere with the sale, transportation, or delivery in interstate commerce of any printing press or presses manufactured by complainant, or the transportation, carting, installation, use, operation, exhibition, display, or repairing of any such press or presses, or the performance of any contract or contracts made by complainant respecting the sale, transportation, delivery, or installation of any such press or presses, by causing or threatening to cause loss, damage, trouble, or inconvenience to any person, firm, or corporation concerned in the purchase, transportation, carting, installation, use, operation, exhibition, display, or repairing of any such press or presses, or the performance of any such contract or contracts; and also and especially from using any force, threats, command, direction, or even persuasion with the object or having the effect of causing any person or persons to decline employment, cease employment, or not seek employment, or to refrain from work or cease working under any person, firm, or corporation being a purchaser or prospective purchaser of any printing press or presses from complainant,

or engaged in hauling, carting, delivering, installing, handling, using, operating, or repairing any such press or presses for any customer of complainant. Other threatened conduct by defendants or the associations they represent, or the members of such associations, in furtherance of the secondary boycott should be included in the injunction according to the proofs.

Complainant is entitled to its costs in this court and in both courts below.

Decree reversed, and the cause remanded to the District Court for further proceedings in conformity with this opinion.

MR. JUSTICE BRANDEIS, dissenting, with whom MR. JUSTICE HOLMES and MR. JUSTICE CLARKE concur.

The Duplex Company, a manufacturer of newspaper printing presses, seeks to enjoin officials of the machinists' and affiliated unions from interfering with its business by inducing their members not to work for plaintiff or its customers in connection with the setting up of presses made by it. Unlike *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, there is here no charge that defendants are inducing employees to break their contracts. Nor is it now urged that defendants threaten acts of violence. But plaintiff insists that the acts complained of violate both the common law of New York and the Sherman Act and that, accordingly, it is entitled to relief by injunction under the state law and under § 16 of the Clayton Act, October 15, 1914, c. 323, 38 Stat. 730, 737.

The defendants admit interference with plaintiff's business but justify on the following ground: There are in the United States only four manufacturers of such presses; and they are in active competition. Between 1909 and 1913 the machinists' union induced three of

them to recognize and deal with the union, to grant the eight-hour day, to establish a minimum wage scale and to comply with other union requirements. The fourth, the Duplex Company, refused to recognize the union; insisted upon conducting its factory on the open shop principle; refused to introduce the eight-hour day and operated for the most part, ten hours a day; refused to establish a minimum wage scale; and disregarded other union standards. Thereupon two of the three manufacturers who had assented to union conditions, notified the union that they should be obliged to terminate their agreements with it unless their competitor, the Duplex Company, also entered into the agreement with the union, which, in giving more favorable terms to labor, imposed correspondingly greater burdens upon the employer. Because the Duplex Company refused to enter into such an agreement and in order to induce it to do so, the machinists' union declared a strike at its factory, and in aid of that strike instructed its members and the members of affiliated unions not to work on the installation of presses which plaintiff had delivered in New York. Defendants insist that by the common law of New York, where the acts complained of were done, and where this suit was brought, and also by § 20 of the Clayton Act, 38 Stat. 730, 738, the facts constitute a justification for this interference with plaintiff's business.

First. As to the rights at common law: Defendants' justification is that of self-interest. They have supported the strike at the employer's factory by a strike elsewhere against its product. They have injured the plaintiff, not maliciously, but in self-defense. They contend that the Duplex Company's refusal to deal with the machinists' union and to observe its standards threatened the interest not only of such union members as were its factory employees, but even more of all members of the several affiliated unions employed by plaintiff's competitors and

by others whose more advanced standards the plaintiff was, in reality, attacking; and that none of the defendants and no person whom they are endeavoring to induce to refrain from working in connection with the setting up of presses made by plaintiff is an outsider, an interloper. In other words, that the contest between the company and the machinists' union involves vitally the interest of every person whose coöperation is sought. May not all with a common interest join in refusing to expend their labor upon articles whose very production constitutes an attack upon their standard of living and the institution which they are convinced supports it? Applying common-law principles the answer should, in my opinion, be: Yes, if as matter of fact those who so coöperate have a common interest.

The change in the law by which strikes once illegal and even criminal are now recognized as lawful was effected in America largely without the intervention of legislation. This reversal of a common-law rule was not due to the rejection by the courts of one principle and the adoption in its stead of another, but to a better realization of the facts of industrial life. It is conceded that, although the strike of the workmen in plaintiff's factory injured its business, the strike was not an actionable wrong; because the obvious self-interest of the strikers constituted a justification. See *Pickett* v. *Walsh*, 192 Massachusetts, 572. Formerly courts held that self-interest could not be so served. Commons, History of Labor in the United States, vol. 2, c. 5. But even after strikes to raise wages or reduce hours were held to be legal because of the self-interest, some courts held that there was not sufficient causal relationship between a strike to unionize a shop and the self-interest of the strikers to justify injuries inflicted. *Plant* v. *Woods*, 176 Massachusetts, 492; *Lucke* v. *Clothing Cutters' Assembly*, 77 Maryland, 396; *Erdman* v. *Mitchell*, 207 Pa. St. 79.

But other courts, repeating the same legal formula, found that there was justification, because they viewed the facts differently. *National Protective Association* v. *Cumming*, 170 N. Y. 315; *Kemp* v. *Division No. 241*, 255 Illinois, 213; *Roddy* v. *United Mine Workers*, 41 Oklahoma, 621. When centralization in the control of business brought its corresponding centralization in the organization of workingmen, new facts had to be appraised. A single employer might, as in this case, threaten the standing of the whole organization and the standards of all its members; and when he did so the union, in order to protect itself, would naturally refuse to work on his materials wherever found. When such a situation was first presented to the courts, judges concluded that the intervention of the purchaser of the materials established an insulation through which the direct relationship of the employer and the workingmen did not penetrate; and the strike against the material was considered a strike against the purchaser by unaffected third parties. *Burnham* v. *Dowd*, 217 Massachusetts, 351; *Purvis* v. *United Brotherhood*, 214 Pa. St. 348; *Booth* v. *Burgess*, 72 N. J. Eq. 181. But other courts, with better appreciation of the facts of industry, recognized the unity of interest throughout the union, and that, in refusing to work on materials which threatened it, the union was only refusing to aid in destroying itself. *Bossert* v. *Dhuy*, 221 N. Y. 342; *Cohn & Roth Electric Co.* v. *Bricklayers Union*, 92 Connecticut, 161; *Gill Engraving Co.* v. *Doerr*, 214 Fed. Rep. 111; *State* v. *Van Pelt*, 136 N. C. 633; *Grant Construction Co.* v. *St. Paul Building Trades Council*, 136 Minnesota, 167; *Pierce* v. *Stablemen's Union*, 156 California, 70, 76.

So, in the case at bar, deciding a question of fact upon the evidence introduced and matters of common knowledge, I should say, as the two lower courts apparently have said, that the defendants and those from whom they

sought coöperation have a common interest which the plaintiff threatened. This view is in harmony with the views of the Court of Appeals of New York. For in New York, although boycotts like that in *Loewe* v. *Lawlor*, 208 U. S. 274, are illegal because they are conducted not against a product but against those who deal in it and are carried out by a combination of persons not united by common interest but only by sympathy, *Auburn Draying Co.* v. *Wardell*, 227 N. Y. 1, it is lawful for all members of a union by whomever employed to refuse to handle materials whose production weakens the union. *Bossert* v. *Dhuy*, *supra*; *P. Reardon, Inc.*, v. *Caton*, 189 App. Div. 501; compare *Paine Lumber Co.* v. *Neal*, 244 U. S. 459, 471. "The voluntary adoption of a rule not to work on non-union made material and its enforcement differs only in degree from such voluntary rule and its enforcement in a particular case. Such a determination also differs entirely from a general boycott of a particular dealer or manufacturer with a malicious intent and purpose to destroy the good will or business of such dealer or manufacturer." *Bossert* v. *Dhuy*, *supra*, p. 355. In my opinion, therefore, plaintiff had no cause of action by the common law of New York.

Second. As to the anti-trust laws of the United States: Section 20, of the Clayton Act, declares,—

"Nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

The acts which are thus referred to are, whether performed singly or in concert,—"Terminating any relation of employment, or . . . ceasing to perform any work or labor, or . . . recommending, advising, or persuading others by peaceful means so to do; or . . . attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or . . . peacefully per-

suading any person to work or to abstain from working; or . . . ceasing to patronize or to employ any party to such dispute, or . . . recommending, advising, or persuading others by peaceful and lawful means so to do; or . . . paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or . . . peaceably assembling in a lawful manner, and for lawful purposes; or . . . doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto."

This statute was the fruit of unceasing agitation, which extended over more than twenty years and was designed to equalize before the law the position of workingmen and employer as industrial combatants. Aside from the use of the injunction, the chief source of dissatisfaction with the existing law lay in the doctrine of malicious combination,[1] and, in many parts of the country, in the judicial declarations of the illegality at common law of picketing and persuading others to leave work. The grounds for objection to the latter are obvious. The objection to the doctrine of malicious combinations requires some explan-

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[1] See "Malice and Unlawful Interference," Ernest Freund, 11 Harv. L. Rev. 449, 461; "Rights of Traders and Laborers," Edward F. McClennen, 16 Harv. L. Rev. 237, 244; "Crucial Issues in Labor Litigation," Jeremiah Smith, 20 Harv. L. Rev. 429, 451; Principles of Labor Legislation, Commons and Andrews, pp. 95–116; Hoxie, Trade Unionism in the United States, p. 231; Groat, Attitude of American Courts Towards Labor Cases, pp. 76–77; 221; 246; J. W. Bryan, The Development of the English Law of Conspiracy, p. 147, *et seq.*

Report of the Industrial Commission, 1901, vol. XVII, p. cxiv, pp. 515, 556; Report of Royal Commission on Trade Disputes and Trade Combinations, 1906, p. 12; Report of Commission on Industrial Relations, 1915, p. 135; p. 377.

For attempts to reach this doctrine by legislation see also 52nd Cong., H. R. 6640, § 1; 56th Cong., H. R. 11667, § 7; 57th Cong., S. 649, § 7.

ation. By virtue of that doctrine, damage resulting from conduct such as striking or withholding patronage or persuading others to do either, which without more might be *damnum absque injuria* because the result of trade competition, became actionable when done for a purpose which a judge considered socially or economically harmful and therefore branded as malicious and unlawful.[1] It was objected that, due largely to environment, the social and economic ideas of judges, which thus became translated into law, were prejudicial to a position of equality between workingman and employer; that due to this dependence upon the individual opinion of judges great confusion existed as to what purposes were lawful and what unlawful;[2] and that in any event Congress, not the judges, was the body which should declare what public policy in regard to the industrial struggle demands.

By 1914 the ideas of the advocates of legislation had fairly crystallized upon the manner in which the inequality and uncertainty of the law should be removed. It was to

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[1] See James Wallace Bryan, The Development of the English Law of Conspiracy:—

"We find little difficulty in attributing the illegality of combinations to strike or otherwise to advance the interests of labor, not to the material loss inflicted upon the employer concerned, but to the harm supposed to result from their activities to the public at large." And since the judge or jury believe the conduct socially bad and since it is admittedly done intentionally, not inadvertently, they declare that the actors are animated by malice which negatives the justification of "fair competition," e. g., Lord Bowen in *Mogul S. S. Co.* v. *McGregor, Gow & Co.*, 1892 A. C. 25, "intentionally to do that which is calculated . . . to damage . . . and does damage another in his property or trade is actionable if done without just cause or excuse, and . . . is what the law calls a malicious injury."

[2] See A. V. Dicey, "The Combination Laws as Illustrating the Relation Between Law and Opinion in England During the Nineteenth Century," 17 Harv. L. Rev. 511, 532: "The very confusion of the present state of the law corresponds with and illustrates a confused state of opinion."

be done by expressly legalizing certain acts regardless of the effects produced by them upon other persons. As to them Congress was to extract the element of *injuria* from the damages thereby inflicted, instead of leaving judges to determine according to their own economic and social views whether the damage inflicted on an employer in an industrial struggle was *damnum absque injuria*, because an incident of trade competition, or a legal injury, because in their opinion, economically and socially objectionable. This idea was presented to the committees which reported the Clayton Act.[1] The resulting law set out certain acts which had previously been held unlawful, whenever courts had disapproved of the ends for which they were performed; it then declared that, when these acts were committed in the course of an industrial dispute, they should not be held to violate any law of the United States. In other words the Clayton Act substituted the opinion of Congress as to the propriety of the purpose for that of differing judges; and thereby it declared that the relations between employers of labor and workingmen were competitive relations, that organized competition was not harmful and that it justified injuries necessarily inflicted in its course.[2] Both the

[1] It was said that this doctrine "completely unsettle(d) the law . . . and set up the chancellor in the midst of the labor organization at the inception of a strike as an arbiter of their conduct as well as a controller of their fates." 62nd Cong., 2nd sess. Hearings Before a Subcommittee of the Senate Committee on the Judiciary on H. R. 23635, p. 429.

Again, it was pointed out that the incorporation of this idea in the Sherman Law had "done violence to the right to strike—to cease work collectively . . . and to the right to withhold patronage and to agree to withhold patronage." Brief by Samuel Gompers, Hearings before the House Committee on the Judiciary on Trust Legislation, 63rd Cong., 2nd sess., vol. 2, p. 1808.

[2] Compare the following: "There are apparently, only two lines of action possible: First to restrict the rights and powers of employers

majority and the minority report of the House Committee indicate that such was its purpose.[1] If, therefore, the act applies to the case at bar, the acts here complained of cannot "be considered or held to be violations of any law of the United States," and, hence, do not violate the Sherman Act.

The Duplex Company contends that § 20 of the Clayton Act does not apply to the case at bar, because it is restricted to cases "between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment"; whereas the case at bar arises between an employer in Michigan and workingmen in New York not in its employ, and does not involve their conditions of employment. But Congress did not restrict the provision to employers and workingmen *in their em-*

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to correspond in substance to the powers and rights now allowed to trade unions, and second, to remove all restrictions which now prevent the freedom of action of both parties to industrial disputes, retaining only the ordinary civil and criminal restraints for the preservation of life, property and the public peace. The first method has been tried and failed absolutely. . . . The only method therefore seems to be the removal of all restrictions upon both parties, thus legalizing the strike, the lockout, the boycott, the blacklist, the bringing in of strike-breakers, and peaceful picketing." Report of the Committee on Industrial Relations, 1915, p. 136.

[1] The majority declared that the section sets out "specific acts which the best opinion of the courts holds to be within the right of parties involved upon one side or the other of a trades dispute," which it has been necessary to affirm because of "the divergent views which the courts have expressed on the subject and the difference between courts in the application of recognized rules." The minority insisted that the section prescribes "a set rule forbidding under any circumstances the enjoining of certain acts which may or may not be actuated by a malicious motive or be done for the purpose of working an unlawful injury, etc." 63rd Cong., 2nd sess., House Report 627, p. 30; *id.* Part 2, Appendix A, p. 20.

ploy. By including "employers and employees" and "persons employed and persons seeking employment" it showed that it was not aiming merely at a legal relationship between a specific employer and his employees. Furthermore, the plaintiff's contention proves too much. If the words are to receive a strict technical construction, the statute will have no application to disputes between employers of labor and workingmen, since the very acts to which it applies sever the continuity of the legal relationship. *Iron Moulders' Union* v. *Allis-Chalmers Co.*, 166 Fed. Rep. 45, 52–53; *Louisville, Evansville & St. Louis R. R. Co.* v. *Wilson*, 138 U. S. 501, 505; cf. *Rex* v. *Neilson*, 44 N. S. 488, 491. The further contention that this case is not one arising out of a dispute concerning the conditions of work of one of the parties is, in my opinion, founded upon a misconception of the facts.

Because I have come to the conclusion that both the common law of a State and a statute of the United States declare the right of industrial combatants to push their struggle to the limits of the justification of self-interest, I do not wish to be understood as attaching any constitutional or moral sanction to that right. All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the community. The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands. This is the function of the legislature which, while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat.